Federal Labor Relations Authority

Washington, D.C. 20424

INFORMATION ANNOUNCEMENT December 23 , 1986

N O T I C E

EFFECTIVE DECEMBER 31, 1986, certain procedures and requirements concerning the filing of documents with the Authority at its national office in Washington, D.C. will be changed. In summary, the Authority's Revised Rules and Regulations provide:

(1) The date of filing with the Authority is the date of mailing indicated by the postmark date -- if no postmark date is evident on the mailing, it will be presumed to have been mailed 5 days prior to receipt (new section 2429.21(b)). The exceptions to this "mail box rule" are:

(a) If the filing is by personal delivery, it will be considered filed on the date it is received by the Authority (new section 2429.21(b)).

(b) Requests for extensions of time must be in writing and received by the Authority not later than five (5) days before the established time limit for filing (revised subsection (a) of section 2429.23).

(2) Regarding the address and hours for filing with the Authority, all documents must be filed with the Director of Case Management, Federal Labor Relations Authority, Docket Room, 500 C Street, SW., Washington, D.C. 20424 (telephone: FTS 382-0748; Commercial (202) 382-0748) between 8 a.m. and 5 p.m., Monday through Friday (except Federal holidays). Documents hand-delivered for filing must be presented in the Docket Room not later than 5 p.m. to be accepted for filing on that day (referenced in new subsection (c) of 2429.21 and set forth in revised subsection (a) of section 2429.24).

(3) The method of filing with the Authority is that all documents must be filed in person (party, agent, delivery service) or by mail (U.S. Postal Service) (revised subsection (e) of section 2429.24).

(4) Regarding an exclusive representative's petition for review filed with the Authority concerning an agency's allegation of nonnegotiability --

(a) Revised subsection (a)(2) of section 2424.4 explains in more detail the Authority's requirement on the exclusive representative to provide an explicit statement of the meaning attributed to the proposal by the exclusive representative.

(b) New subsection (c) of section 2424.4 explains the Authority's procedures concerning incomplete petitions for review.

(c) Revised subsection (a)(2) of section 2424.6 explains in more detail the Authority's requirements concerning the contents of the agency's statement of position in response to the exclusive representative's petition for review.

(5) Regarding exceptions to an arbitration award filed with the Authority --

(a) Section 2429.8 pertaining to the filing of requests for stays of arbitration awards is revoked. The Authority has concluded that the section is unnecessary in view of its interpretation of section 7122(b) of the Statute that an arbitration award is not final and binding for compliance purposes until exceptions to the award are resolved.

(b) The contents of exceptions must include the name and address of the arbitrator (new subsection (e) of section 2425.2).

Federal Labor Relations Authority

Washington, D.C. 20424

INFORMATION ANNOUNCEMENT

December 22, 1986

The following was published in the Federal Register (Vol. 51, No. 245) on Monday, December 22, 1986 beginning on page 45751:

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Parts 2422, 2423, and 2429

Processing of Cases; Miscellaneous and General Requirements

AGENCY: Federal Labor Relations Authority and the General Counsel of the Federal Labor Relations Authority.

ACTION: Final rules.

SUMMARY: Sections of Parts 2422, 2423, and 2429 concerning (1) computation of time for filing papers (§ 2429.24), and (2) the place and method of filing (§ 2429.24) are amended.

EFFECTIVE DATE: December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Harold D. Kessler, (202) 382–0715; David L. Feder, Office of the General Counsel, Federal Labor Relations Authority, (202) 382–0834.

SUPPLEMENTARY INFORMATION: On September 23, 1986, the Federal Labor Relations Authority published proposed amendments to its rules and regulations (51 FR 33838) concerning computation of time for filing papers and place and method of filing. The Authority now adopts those proposed revisions as final amendments to §§ 2429.21 and 2429.24.

Several questions were raised about the effect of these changes on the time for a party to file documents after receipt from another party. The changed provision only establishes date of mailing as a filing date with the Authority. Section 2429.27 requiring service on parties, including the General Counsel/Regional Director where appropriate, to be by certified mail or in person is unchanged, as is the § 2429.22 provision for additional time for filing after service by mail.

A request for an extension of time under § 2429.23(a) is excluded from the revised regulation on computation of time for filing papers because it is essential that the existence of the request be known before a due date. This could not be controlled if a request were deemed filed on the date mailed.

With respect to the exclusion of filing of unfair labor practice charges under § 2423.6 and representation petitions under § 2422.21 from the revised regulation, of the nine Federal agencies and three labor organizations submitting comments on the proposed changes in the regulations, only one labor organization opposed the exclusion of the filing of unfair labor practice charges from the proposed change. The commenting labor organization did not oppose the exclusion of the filing of representation petitions from the proposed change. It was concluded that the method for determining the filing date of an unfair labor practice charge should be the same as that of a representation petition. Further, no commenting labor organization or agency has suggested that the method for determining when an unfair labor practice charge is filed for purposes of determining timeliness under 5 U.S.C. 7118(a)(4) has denied any persons of rights guaranteed under the Federal Service Labor-Management Relations Statute or has caused any hardship on parties filing unfair labor practice charges with the Regional Offices. Almost 8 years of experience of designating charges and representation petitions as having been filed when received by the Regional Offices has resulted in an established practice recognized by all participants in the Federal service labor-management relations program encompassing the sequential numbering of charges and petitions as received in the Regional Offices. No commenting labor organization or agency has provided any rationale for changing the method of determining when unfair labor practice charges and representation petitions are deemed to be filed. It was therefore concluded that changing the determination as to the filing date for unfair labor practice charges and representation petitions, and discarding the sequential numbering of charges and petitions as received in the Regional Office, would serve no purpose and possibly lead to confusion.

List of Subjects in 5 CFR Parts 2422, 2423, and 2429

Administrative practice and procedure, Government employees, Labor-management relations.

For the reasons set out in the preamble, 5 CFR is amended as follows:

PART 2422—REPRESENTATION PROCEEDINGS

1. The authority citation for Part 2422 continues to read as follows:

Authority: 5 U.S.C. 7134.

2. 5 CFR Part 2422 is amended by adding § 2422.2(e)(4) to read as follows:

§ 2422.2 Contents of petition; procedures for consolidation of existing exclusively recognized units; filing and service of petition; challenges to petition.

* * * * *

(e) * * *

(4) A petition will be deemed to be filed when it is received by the appropriate Regional Director in accordance with the requirements in paragraphs (e) (1), (2), and (3) of this section.

* * * * *

PART 2423—UNFAIR LABOR PRACTICE PROCEEDINGS

1. The authority citation for Part 2423 continues to read as follows:

Authority: 5 U.S.C. 7134.

2. 5 CFR Part 2423 is amended by adding § 2423.6(c) to read as follows:

§ 2423.6 Filing and service of copies.

* * * * *

(c) A charge will be deemed to be filed when it is received by the appropriate Regional Director in accordance with the requirements in paragraph (a) of this section.

PART 2429—MISCELLANEOUS AND GENERAL REQUIREMENTS

1. The authority citation for Part 2429 continues to read as follows:

Authority: 5 U.S.C. 7134.

2. 5 CFR Part 2429 is amended by revising § 2429.21 to read as follows:

§ 2429.21 Computation of time for filing papers.

(a) In computing any period of time prescribed by or allowed by this

subchapter, except in agreement bar situations described in § 2422.3 (c) and (d) of this subchapter, and except as to the filing of exceptions to an arbitrator's award under § 2425.1 of this subchapter, the day of the act, event, or default from or after which the designated period of time begins to run shall not be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or a Federal legal holiday in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or a Federal legal holiday. *Provided, however,* in agreement bar situations described in § 2422.3 (c) and (d), if the 60th day prior to the expiration date of an agreement falls on Saturday, Sunday, or a Federal legal holiday, a petition, to be timely, must be filed by the close of business on the last official workday preceding the 60th day. When the period of time prescribed or allowed is 7 days or less, intermediate Saturdays, Sundays, and Federal legal holidays shall be excluded from the computations.

(b) Except when filing an unfair labor practice charge pursuant to § 2423.6 of this subchapter, a representation petition pursuant to § 2422.2 of this subchapter, and a request for an extension of time pursuant to § 2429.23(a) of this part, when this subchapter requires the filing of any paper with the Authority, the General Counsel, a Regional Director, or an Administrative Law Judge, the date of filing shall be determined by the date of mailing indicated by the postmark date. If no postmark date is evident on the mailing, it shall be presumed to have been mailed 5 days prior to receipt. If the filing is by personal delivery, it shall be considered filed on the date it is received by the Authority or the officer or agent designated to receive such matter.

(c) All documents filed or required to be filed with the Authority shall be filed in accordance with § 2429.24(a) of this subchapter.

3. 5 CFR Part 2429 is amended by revising § 2429.23(a) to read as follows:

§ 2429.23 Extensions; waiver.

(a) Except as provided in paragraph (d) of this section, and notwithstanding § 2429.21(b) of this subchapter, the Authority or General Counsel, or their designated representatives, as appropriate, may extend any time limit provided in this subchapter for good cause shown, and shall notify the parties of any such extension. Requests for extensions of time shall be in writing and received by the appropriate official not later than five (5) days before the established time limit for filing, shall state the position of the other parties on the request for extension, and shall be served on the other parties.

* * * * *

4. 5 CFR Part 2429 is amended by revising § 2429.24 (a) and (e) to read as follows:

§ 2429.24 Place and method of filing; acknowledgment.

(a) All documents filed or required to be filed with the Authority pursuant to this subchapter s all be filed with the Director of Case Management, Federal Labor Relations Authority, Docket Room, 500 C Street SW., Washington, DC 20424 (telephone: FTS 382–0748; Commercial (202) 382–0748) between 8 a.m. and 5 p.m., Monday through Friday (except Federal holidays). Documents hand-delivered for filing must be presented in the Docket Room not later than 5 p.m. to be accepted for filing on that day.

* * * * *

(e) All documents filed pursuant to this section shall be filed in person or by mail.

* * * * *

Dated: December 17, 1986.

Jerry L. Calhoun,

Chairman.

Henry B. Frazier III,

Member.

Jean McKee,

Member.

John C. Miller,

General Counsel.

[FR Doc. 86–28608 Filed 12–19–86; 8:45 am]

BILLING CODE 6727-01-M

5 CFR Part 2423

Unfair Labor Practice Proceedings

AGENCY: Federal Labor Relations Authority and the General Counsel of the Federal Labor Relations Authority.

ACTION: Final rule.

SUMMARY: The Authority and the General Counsel have decided not to adopt the regulation as proposed regarding the disclosure of witnesses and proposed exhibits ten (10) days prior to an unfair labor practice hearing. Rather, the Authority and General Counsel are adopting a modified version of the proposed regulation which requires that the exchange of witness lists and copies of proposed exhibits occur at a prehearing conference at the site of the unfair labor practice hearing just prior to the opening of the hearing, rather than ten (10) days prior to the opening of the hearing. Thus, § 2423.14 of the regulations is revised accordingly.

EFFECTIVE DATE: December 31, 1986.

FOR FURTHER INFORMATION CONTACT: David L. Feder, (202) 382–0834.

SUPPLEMENTARY INFORMATION: On September 23, 1986, the Federal Labor Relations Authority and the General Counsel of the Authority published a proposed amendment to its rules and regulations (51 FR 33839). The proposed change required all parties to exchange proposed witness lists and documentary evidence ten (10) days prior to the opening of an unfair labor practice hearing (§ 2423.14).

One labor organization and eight agencies submitted comments on the proposed regulation. The vast majority of comments received opposed the regulation as proposed contending in essence that the expenditure of resources required to comply with the proposed regulation would not offset any compensating benefits derived from the proposed change. The commentators further suggested that the regulation as proposed would have the opposite effect of that intended in that it would raise more questions than it answers and would result in more complex hearings and burdened records regarding whether a particular witness or exhibit was known or was available more than ten (10) days prior to the hearing. Agencies commented that it would create an unfair advantage for the General Counsel.

In view of the comments received, the Authority and General Counsel have determined not to adopt the regulation as proposed regarding the disclosure of witnesses and proposed exhibits ten (10) days prior to an unfair labor practice hearing. Rather, the Authority and General Counsel adopting a modified version of the proposed regulation which alleviates the difficulties envisioned by the commenting agencies and labor organizations. Accordingly, the final regulation would require the exchange of witness lists and copies of proposed exhibits, with index, at a prehearing conference at the site of the unfair labor practice hearing just prior to the opening of the hearing. This proposal would alleviate the concerns of the commenting parties involving additional travel to the site of the unfair labor practice, unfair advantage to the General Counsel and collateral issues which may arise regarding compliance with the regulation as originally proposed. The modified regulation would still continue to afford the parties an opportunity to review all documentations to be submitted as exhibits prior to the commencement of the hearing thus facilitating the

introduction of evidence at the hearing, the original intent of the proposed regulation. Further, any issues concerning the calling of witnesses or introduction of exhibits not exchanged prior to the hearing would be subject to the discretion of the Administrative Law Judge presiding, as is the current practice concerning the calling of witnesses and introduction of evidence.

List of Subjects in 5 CFR Part 2423

Administrative practice and procedure, Government employees, Labor-management relations.

For the reasons set out in the preamble, 5 CFR Part 2423 is amended as follows:

PART 2423—UNFAIR LABOR PRACTICE PROCEEDINGS

1. The authority citation for Part 2423 continues to read as follows:

Authority: 5 U.S.C. 7134.

2. 5 CFR 2423.14 is amended by revising the section heading, redesignating paragraphs (a) and (b) as paragraphs (b) and (c) and adding a new paragraph (a) to read as follows:

§ 2423.14 Prehearing disclosure, Conduct of hearing.

(a) Parties will exchange proposed witness lists and copies of documents, with index, intended to be offered into evidence at the hearing at a prehearing conference at the site of the unfair labor practice hearing. The calling of witnesses or introduction of exhibits not exchanged prior to the hearing will be subject to the discretion of the Administrative Law Judge presiding.

* * * * *

Dated: December 17, 1986.

Jerry L. Calhoun,

Chairman

Henry B. Frazier III,

Member.

Jean McKee,

Member.

John C. Miller,

General Counsel.

[FR Doc. 86-28612 Filed 12-19-86; 8:45 am]

BILLING CODE 6727-01-M

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5 CFR Part 2424

Expedited Review of Negotiability Issues

AGENCY: Federal Labor Relations Authority.

ACTION: Final rules.

SUMMARY: The Authority amends its rules concerning (1) the content of a petition for review of negotiability issues (§ 2424.4(a)(2)) and the filing of an incomplete petition for review (§ 2424.4(c)); and (2) the content of the agency statement of position (§ 2424.6(a)(3)).

EFFECTIVE DATE: December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Harold D. Kessler, (202) 382-0715.

SUPPLEMENTARY INFORMATION: On September 23, 1986, the Federal Labor Relations Authority published proposed amendments to its rules and regulations (51 FR 33845) concerning the content of a petition for review of an incomplete negotiability issue (§ 2424.4(a)(2)) and the filing of an incomplete petition for review (§ 2424.4(e)); (2) the content of the agency statement of position (§ 2424.6(a)(3)); and (3) procedures which the Authority may follow if the record created by the parties is not of sufficient quality to enable it to expeditiously reach a reasoned decision.

The comments received by the Authority with respect to the proposed regulations concerning settlement meetings and hearings to clarify deficient records generally reflected uncertainty or lack of confidence in the effectiveness of such procedures in resolving negotiability issues. In view of this widespread feeling that evidence is lacking to justify adopting the procedures at this time, the Authority has decided that the proposed regulations regarding them will not be implemented. Instead, the Authority has decided to develop an experimental project to assist parties in reaching voluntary settlements of negotiability disputes.

List of Subjects in 5 CFR Parts 2424

Administrative practice and procedures, Government employees, Labor-management relations.

PART 2424—EXPEDITED REVIEW OF NEGOTIABILITY ISSUES

1. The authority citation for 5 CFR Part 2424 continues to read:

Authority: 5 U.S.C. 7134.

2. Section 2424.4 is amended by revising paragraph (a)(2) and by adding paragraph (c) as follows:

§ 2424.4 Content of petition; service.

(a) * * *

(2) An explicit statement of the meaning attributed to the proposal by the exclusive representative including:

(i) Explanation of terms of art, acronyms, technical language, or any other aspect of the language of the proposal which is not in common usage; and

(ii) Where the proposal is concerned with a particular work situation, or other particular circumstances, a description of the situation or circumstances which will enable the Authority to understand the context in which the proposal is intended to apply;

* * * * *

(c) (1) Filing an incomplete petition for review will result in the exclusive representative being asked to provide the missing or incomplete information. Noncompliance with a request to complete the record may result in dismissal of the petition.

(2) The processing priority accorded to an incomplete petition, relative to other pending negotiability appeals, will be based upon the date when the petition is completed—not the date it was originally filed.

3. Section 2424.6 is amended by revising paragraph (a)(2) as follows:

§ 2424.6 Position of the agency; time limits for filing; service.

(a) * * *

(2) Setting forth in full its position on any matters relevant to the petition which it wishes the Authority to consider in reaching its decision, including a full and detailed statement of its reasons supporting the allegation. The statement shall cite the section of any law, rule or regulation relied upon as a basis for the allegation and shall contain a copy of any internal agency rule or regulation so relied upon. The statement shall include:

(i) Explanation of the meaning the agency attributes to the proposal as a whole, including any terms of art, acronyms, technical language or any other aspect of the language of the proposal which is not in common usage; and

(ii) Description of a particular work situation, or other particular circumstance the agency views the proposal to concern, which will enable the Authority to understand the context in which the proposal is considered to apply by the agency.

* * * * *

Dated: December 17, 1986.

Jerry L. Calhoun,

Chairman.

Henry B. Frazier III,

Member.

Jean McKee,

Member.

[FR Doc. 86-28609 Filed 12-19-86; 8:45 am]

BILLING CODE 6727-01-M

5 CFR Parts 2425 and 2429

Processing of Cases; Exceptions to Arbitration Awards

AGENCY: Federal Labor Relations Authority.

ACTION: Final rules.

SUMMARY: These amendments revoke § 2429.8 of the rules and regulations pertaining to the filing of requests for stays of arbitration awards; and add to § 2425.2 a requirement that the party filing exceptions to an award shall include the name and address of the arbitrator with the exceptions.

EFFECTIVE DATE: December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Harold D. Kessler, Director, Office of Case Management, 500 C Street SW., Washington, DC 20424, (202) 382–0715.

SUPPLEMENTARY INFORMATION:

Stay of Arbitration Award. On September 23, 1986, the Federal Labor Relations Authority republished a proposal to revoke § 2429.8 which provided for the filing of requests for stays of arbitration awards (51 FR 33846). The Authority based the proposed action on its interpretation of 5 U.S.C. 7122(b), which provides that if an exception to an arbitration award is not filed with the Authority within the prescribed time period then the award becomes final and binding. The Authority interprets 5 U.S.C. 7122(b) to mean that if timely exceptions to an award are filed with the Authority then the award is not final and binding for compliance purposes until the Authority resolves the exceptions. The Authority therefore determined that if a party files timely exceptions to an award it is not necessary to also file a request for a stay of the award. Consequently, the Authority concluded that § 2429.8 of the rules and regulations governing such requests is unnecessary and should be revoked.

The agency commentators supported the proposed revision and recommended its adoption. The labor organization commentators disagreed with the Authority's interpretation of 5 U.S.C. 7122(b). They also indicated concern that revocation of the stay provision would lead to the filing of frivolous exceptions and contribute to delay in Authority resolution of arbitration cases. The labor organizations also expressed a preference for maintaining the Authority's stay procedures based on views of judicial and administrative agency practice.

These comments reflect a misunderstanding of the action proposed by the Authority. First, revocation of the stay request procedure will not create an automatic stay provision. An arbitration award to which timely exceptions have been filed is not final and binding for compliance purposes. There is no need to request a stay of an award that is not final and binding for compliance purposes. This conclusion is premised on the Authority's view of what Congress intended in the Statute. The plain language and legislative history of 5 U.S.C. 7122(b), as explained more fully in the September 23, 1986, notice of proposed amendments persuade the Authority that an arbitration award is not final and binding for compliance purposes until exceptions to the award are resolved.

Furthermore, the Authority has promptly denied and will continue to promptly deny all exceptions that fail to establish that an award is deficient on any of the grounds provided in 5 U.S.C. 7122(a). Prompt Authority action on exceptions should deter the filing of frivolous exceptions and avoid delays in the processing of cases. A recent examination of the Authority's arbitration case docket supports the view that the union's concern as to delay are unfounded. The Authority's arbitration case docket on October 1, 1986, was 71 cases, as compared to 248 cases on October 1, 1983. During Fiscal Year 1986, the average number of days to close an arbitration case was 189 days, as compared to 359 days during FY 1984. Accordingly, it does not appear that the Authority's case processing procedures will unduly delay arbitration awards from becoming final and binding for compliance purposes where appropriate under the Authority's view of section 7122(b). The Authority is also committed to resolving all other exceptions as expeditiously as possible and that commitment is not altered by revocation of the request procedures. In any event, it should be noted that such concerns would not properly govern an interpretation of the Statute. *AFGE* v. *FLRA*, 778 F.2d 80, 851, 861 n.17 (D.C. Cir. 1985).

Finally, the comments concerning judicial and other agency stay procedures are not persuasive. For example, one union asserted essentially that the Authority's view of stays of arbitration awards should be governed by the practice in this area concerning Merit Systems Protection Board (MSPB) decisions. It is argued that MSPB decisions must be expressly stayed pending judicial review in order for an agency to avoid being required to comply with the decision during the review process. Congress created provisions in section 7122(b) of the Statute concerning arbitration awards which are not found elsewhere. The language and legislative history concerning section 7122(b) of the Statute discussed above have no counterpart concerning MSPB decisions. In addition, any party to an arbitration award within the Authority's jurisdiction may obtain review of that award from the Authority under section 7122(b). Review of an MSPB decision, on the other hand, is restricted in the case of employer agencies to a petition for review by the Director of the Office of Personnel Management to the Federal Circuit under 5 U.S.C. 7703(d), which the court may in its discretion deny.

Furthermore, union claims that adoption of the proposed revocation would result in the Authority's occupying a unique status in terms of interlocutory stays of decisions under review are without merit. Various agency orders, including those of the National Labor Relations Board and the Authority, as well as private sector arbitration awards, are not self-enforcing and need not be stayed pending their review. In short, the Authority finds no support for the view that Congress intended the necessity for a stay provision for arbitration awards to be governed by MSPB or other administrative or judicial practice.

A union also contended that the procedures governing stays under Executive Order 11491 should continue to be followed under the Statute. The Authority does not find this argument persuasive. There are major differences between E.O. 11491 and the Statute concerning arbitration in the Federal sector. Most significantly, there was no provision in the Executive Order comparable to section 7122(b) of the Statute. We believe that the differences clearly indicate Congress' intent that the practice followed under E.O. 11491 must be changed.

Content of exception. The Authority proposed to amend § 2425.2 to require that a party filing exceptions to an arbitration award must include the name and address of the arbitrator with the exceptions. The Authority proposed to add the requirement to enable the Authority to mail a copy of its decision on the exceptions in each case to the arbitrator. Only one comment was received expressing no objection on the proposed amendment. The Authority has decided to adopt the amendment as proposed.

List of Subjects in 5 CFR Parts 2425 and 2429

Administrative practice and procedure, Government employees, Labor-management relations.

Accordingly, the final rules and regulations of the Authority are amended as follows:

PART 2425—REVIEW OF ARBITRATION AWARDS

1. The authority citation for 5 CFR Parts 2425 and 2429 continues to read:

Authority: 5 U.S.C. 7134.

2. Section 2425.2(e) is added to read as follows:

§ 2425.2 Contents of exceptions.

* * * * *

(e) The name and address of the arbitrator.

PART 2429—MISCELLANEOUS AND GENERAL REQUIREMENTS

§ 2429.8 [Removed and Reserved]

Section 2429.8 is removed and reserved.

Dated: December 17, 1986.

Jerry L. Calhoun,

Chairman.

Henry B. Frazier III,

Member.

Jean McKee,

Member.

[FR Doc. 86-28610 Filed 12-19-86; 8:45 am]

BILLING CODE 6727-01-M

(MORE)

Proposed Rules

Federal Register
Vol. 51, No. 245
Monday, December 22, 1986

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Parts 2423, 2429, and Ch. XIV

Processing of Cases; Unfair Labor Practice

AGENCY: Federal Labor Relations Authority (including the General Counsel of the Federal Labor Relations Authority).

ACTION: Withdrawal of proposed amendment of rules and regulations.

SUMMARY: The Authority has decided to retain the existing procedures for processing unfair labor practice cases contained in Part 2423 of the rules and regulations, codified at 5 CFR Part 2423, and not to delegate decision-making in such cases as earlier proposed.

FOR FURTHER INFORMATION CONTACT: Harold D. Kessler, Director of Case Management, Federal Labor Relations Authority, 500 C Street SW., Washington, DC 20424, (202) 382–0715.

SUPPLEMENTARY INFORMATION: On September 23, 1986, the Federal Labor Relations Authority published proposed amendments to its rules and regulations (51 FR 33840) concerning the delegation of decision-making authority in unfair labor practice cases under 5 U.S.C. 7105 (e) and (f) to its Administrative Law Judges, subject to discretionary review by the Authority. The Authority has decided to retain the existing procedures for processing unfair labor practice cases.

The proposed amendments as published on September 23, 1986, stemmed from suggestions made by various parties in 1984 urging the Authority to delegate decision-making responsibility in unfair labor practice cases to its Administrative Law Judges. The proponents of such delegation believed that it would allow the Authority to utilize its limited resources more efficiently and result in the expeditious processing of cases. In publishing the proposed amendments, the Authority anticipated that the delegation of decision-making would expedite the process by which unfair labor practice cases are resolved. However, after reviewing all the comments received concerning the proposed amendments and considering the recent advances made by the Authority in reducing its case inventory, the Authority finds that a departure from the existing case processing procedures is inadvisable.

Since the delegation of decision-making authority was suggested in 1984, the Authority has made significant improvements in reducing the number of pending unfair labor practice cases and in reducing the average amount of time such cases remain before the Authority. At the beginning of Fiscal Year 1985, there were 281 unfair labor practice cases pending with the Authority. By the end of Fiscal Year 1986, that number had been reduced to 115 cases. Equally significant is the reduction in the age of cases pending before the Authority and the number of "old" cases still awaiting resolution. From October 1985 to October 1986, the number of unfair labor practice cases pending with the Authority for more than 24 months was reduced by more than 50%—from 11 to 5 cases. From December 31, 1985, to October 1986, the average age of pending unfair labor practice cases measured from the date of filing was reduced from 533 to 277 days. Thus, in the past 10 months alone, the average age of pending unfair labor practice cases was cut almost in half (48%). This downward trend is consistent with the Authority's goal of processing all cases within 180 days after their filing. The Authority fully expects to further reduce the existing unfair labor practice case inventory and meet the overall timeliness goal in the near future. The Authority is confident that the purposes behind the proposed delegation of decision-making responsibility can better be achieved through the use of the existing unfair labor practice case processing procedures.

The parties commenting on the proposed delegation expressed widespread concern that authorizing delegation could lead to inconsistent case law and an inability for parties to develop a systematic approach to their day-to-day labor-management relationships. Concern also was expressed about the precedential nature of the decisions issued and their enforceability. Finally, there were questions raised about the bases for accepting review of Administrative Law Judges' decisions and whether there was a need for all unfair labor practice cases to be decided by Judges. These concerns and the considerable improvement in issuing timely unfair labor practice decisions, persuaded the Authority not to authorize delegation of unfair labor practice decision-making responsibility to its Administrative Law Judges.

The Authority is grateful to all the parties who appeared in person or provided written submissions concerning this matter.

The proposed amendment to 5 CFR Part 2424 published in the Federal Register on September 23, 1986, page 33845 is withdrawn.

Dated: December 17, 1986.

Jerry L. Cathoun,

Chairman.

Henry B. Frazier III,

Member.

Jean McKee,

Member.

[FR Doc. 86–28611 Filed 12–19–86; 8:45 am]

BILLING CODE 6727–01–M

Federal Labor Relations Authority

News Release

Washington, D.C. 20424

Immediate Release **INFORMATION ANNOUNCEMENT** December 22, 1986

In today's Federal Register, 51 F.R. 45751, the Federal Labor Relations Authority promulgated final rules relating to changes in various aspects of its case processing procedures. The rules will become effective December 31, 1986.

Briefly summarized the changes are as follows:

- the provisions governing the computation of time for filing documents with the Authority are amended to provide that the date of filing will be determined by the date of mailing as indicated by the postmark date. If there is no postmark, the date of filing is presumed to be 5 days prior to receipt. If the filing is by personal delivery, it is the date received by the Authority. This amendment is not applicable to unfair labor practice and representation cases filed in Regional Offices or requests for extension of time filed with the Authority. The Authority regulations are further amended to specify the address for the filing of documents and the official hours of the docket room.

- the provisions concerning unfair labor practice procedures are amended to provide for an exchange of witness lists and proposed exhibits during a prehearing conference just prior to the opening of the hearing.

- the provisions of the regulations relating to requests for stays of arbitration awards are revoked and upon the timely filing of exceptions to an award, the award is not final and binding for compliance purposes until the Authority resolves the exceptions.

- the existing procedures for processing unfair labor practice cases are retained; decision-making in such cases will not be delegated, as earlier proposed.

(over)

- the rules are amended concerning (1) the content of a petition for review of negotiability issues; and (2) the content of the agency statement of position.

Issuance of the final regulations represents the culmination of a process that included internal study groups; the conduct of public hearings in June 1986; and the publishing of proposed regulatory changes in the Federal Register on September 23, 1986. As discussed further in the Federal Register notice, the Authority and its Office of General Counsel carefully considered the comments of Unions, Agencies, and the public before issuing the regulations in final form.

Federal Labor Relations Authority

News Release

Washington, D.C. 20424

Immediate Release INFORMATION ANNOUNCEMENT December 9, 1986

AUTHORITY FINDS MONEY-RELATED FRINGE BENEFITS NEGOTIABLE: CHAIRMAN CALHOUN DISSENTS

By a 2-1 vote, the Federal Labor Relations Authority has decided that a Union proposal calling for a specific percentage contribution by management to the employees' health benefits premiums is a proper subject of collective bargaining. The case involved Non-Appropriated Fund (NAF) employees within the Department of Defense: American Federation of Government Employees, AFL-CIO, Local 1897 and Department of the Air Force, Eglin Air Force Base, Florida, 24 FLRA No. 41 (December 9, 1986).

Unlike the vast majority of Federal employees, some NAF employees' wages and money-related fringe benefits are not specifically set by statute or Government-wide regulation. The NAF personnel system is established world-wide by regulations and policy statements authorized by the Department of Defense and military departments therein. In finding the proposal negotiable, the majority of the Authority reasoned that:

> The subject of wages and fringe benefits is not in and of itself excluded from the scope of the duty to bargain as defined by the Statute. The proposal in this case does not relate to a matter which is specifically provided for by Federal statute and, therefore, does not come within the exceptions to the definition of conditions of employment under the Statute. . . . the proposal does not determine the conditions of employment of nonunit employees or interfere with the Agency's right to determine its budget. Lastly, the Agency has not established that the proposal conflicts with an agency rule or regulation for which a compelling need exists.

In reaching this conclusion the majority traced the language of the Statute, the legislative history of the Statute, and

the previous interpretations of both the Authority, and its predecessor the Federal Labor Relations Council. The decision notes that the Authority in the Fort Bragg Dependent Schools case, 12 FLRA 519 (1983) held that proposals on wage-related matters are negotiable if they do not concern matters specifically provided for by law which are otherwise consistent with applicable law and regulations.

Chairman Calhoun dissents from the decision. In his opinion he states that he finds that a compelling need exists for the Defense and Air Force regulations in that they are essential to the mission and execution of the functions of the agency based on the need for a comprehensive, uniform system of compensation for employees who throughout the world perform the same or substantially similar work. He further explains that absent evidence of express Congressional intent to make compensation matters a subject of collective bargaining, he would not imply such an intent, and hence finds such proposals not to be negotiable as a general proposition.

The decision is a significant one because the Authority has before it a number of cases involving similar proposals, the issuance of which has been delayed pending resolution of this case.

Federal Labor Relations Authority

News Release

Washington, D.C. 20424

Immediate Release INFORMATION ANNOUNCEMENT October 31, 1986

UNIONS MAY OBTAIN NAMES AND HOME ADDRESSES OF BARGAINING UNIT EMPLOYEES, UNDER THE FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE

The Federal Labor Relations Authority has issued its lead decision holding that upon request management must provide unions with the names and home addresses of bargaining unit employees. The case is Farmers Home Administration Finance Office, St. Louis, MO and American Federation of Government Employees, AFL-CIO, Local 3354, 23 FLRA No. 101 (October 31, 1986).

This case and others raising similar issues have long litigation histories. The Authority's original decision (19 FLRA No. 21) in the case found that disclosure of such information was prohibited by law (specifically the Privacy Act). The Authority later determined, however, that it had not addressed the question of whether the Union was entitled to the requested information under the "routine use" exception to the Privacy Act. Accordingly, FLRA sought remand of this case (which was then pending in the District of Columbia Circuit Court of Appeals) and two others. In order to give full consideration to the many issues raised by requiring disclosure of names and home addresses of federal employees, the Authority sought amicus briefs from all interested persons on the full range of issues. Those briefs were fully considered by the Authority in reaching its decision.

The decision on remand analyzes the interplay of the Federal Labor-Management Relations Statute, the Privacy Act, and the Freedom of Information Act, and concludes that, "the release of names and home addresses to the Union is not prohibited by law, is necessary for the Union to fulfill its duties under the Statute, and meets the other requirements of Section 7114(b)(4)." The Authority also held that unlike requests for other types of information, "a precise explication of the reasons for the request . . . is not necessary."

Finally, the Authority emphasized that names and home addresses of bargaining unit employees should be provided whether or not alternative means of communication are available. The Authority stated, "We will not review the adequacy of alternative methods of communication on a case-by-case basis."

Federal Labor Relations Authority

News Release

Washington, D.C. 20424

Immediate Release

October 15, 1986

THE FLRA MADE SUBSTANTIAL PROGRESS IN FY 1986

The Federal Labor Relations Authority in Fiscal Year 1986 made substantial progress in reducing its inventory of pending cases and the time used to process cases. Between October 1, 1985, and September 30, 1986, the Authority closed 614 cases, reducing the inventory of pending cases from 460 at the beginning of the fiscal year to 389 cases at the end of FY 86. This is the smallest year-end inventory since the close of FY 1979.

The Authority has established the goal of closing all cases within 6 months of their receipt. On April 1, 1986, there were 512 cases which would have been pending for more than 6 months on September 30. On September 30, that figure had been reduced to 212, a 59 percent reduction. Authority Members and staff remain committed to meeting the goal, and will continue efforts to further reduce case-processing time.

Federal Labor Relations Authority

Washington, D.C. 20424

INFORMATION ANNOUNCEMENT August 22, 1986

The following notice was published in the Federal Register (Vol. 51, No. 163) on Friday, August 22, 1986 beginning on page 30124:

FEDERAL LABOR RELATIONS AUTHORITY

Federal Employees; Testing of Employees In Certain Occupational Categories To Discover Positive Indicators of Drug Abuse, 5 U.S.C. 7101, et seq.

AGENCY: Federal Labor Relations Authority.

ACTION: Notice of opportunity to file amicus briefs in certain proceedings in which agency management has asserted the nonnegotiability of Union proposals relating to various aspects of agency initiated testing of civilian employees to identify drug abuse.

SUMMARY: The Federal Labor Relations Authority provides an opportunity for all interested agencies, labor organizations, and other interested persons to file amicus briefs on significant issues of law common to a number of cases pending before the Authority. These cases involve allegations of nonnegotiability by agency management concerning union proposals relating to the substance of, procedures for, and/or appropriate arrangements concerning, the implementation by the agency of changes to agency regulations describing its Alcohol and Drug Abuse Prevention and Control Program.

DATE: Amicus briefs submitted in response to this notice will be considered if received by October 22, 1986. Requests for extensions of time will not be granted absent extraordinary circumstances.

ADDRESS: All briefs shall be captioned "Drug Testing Cases Amicus Brief," and shall contain separate, numbered headings for each issue discussed. An original and four (4) copies of each amicus brief, with any enclosures, on 8½ x 11 inch size paper, shall be addressed to Harold D. Kessler, Director, Office of Case Management, FLRA, Attn: Drug Testing Cases, 500 C Street, SW., Washington, DC 20424.

FOR FURTHER INFORMATION CONTACT: Harold D. Kessler, Director of Case Management, Federal Labor Relations Authority, (202) 382-0715.

SUPPLEMENTARY INFORMATION: The Federal Labor Relations Authority currently has before it several cases involving the implementation by agency management of programs to randomly test incumbent employees in certain occupational series for positive indications of drug use. These cases are before the Authority because of statements of nonnegotiability made by agency management pursuant to 5 U.S.C. 7117. *See also* 5 CFR 2424.3. In addition, many of the issues raised in these cases can potentially be the subject of unfair labor practice and/or arbitration proceedings.

These cases are properly before the Authority. *See, for example, National Federation of Federal Employees, et al.* v. *Caspar W. Weinberger, et al.* (D.D.C. June 23, 1983), where the Court, in denying plaintiffs' application for a preliminary injunction and granting the defendants' motion to dismiss, stated that "the ultimate question on the merits concerns a labor-management dispute—i.e., an issue of federal personnel policy . . . . Although not without concern over the serious issues presented, the Court concludes, on the basis of the record before it that the FLRA and MSPB will eventually afford plaintiffs sufficient judicial review of their substantial challenges to the (drug abuse) testing program . . . ." It is the Authority's information that other judicial challenges to similar agency initiated drug testing programs are and have been pending.

The Authority has identified several cases, listed below, which address issues of law common to the range of matters involving drug abuse testing.

requiring random testing of employees for indications of drug use?

Dated: August 19, 1986.

For the Authority.

Jacqueline R. Bradley,

Executive Director.

[FR Doc. 86-19000 Filed 8-21-86; 8:45 am]

BILLING CODE 6727-01-M

Since these matters are likely to be of concern to agencies, labor organizations and other interested parties, the Authority believes it appropriate to provide for the filing of amicus briefs addressing these issues. These cases are the following:

NAGE, Local R14 and Army, Army Dugway Proving Ground, Case No. O–NG–1268; *NFFE, Local 15 and Heodquarters, U.S. Armament Munition and Chemical Command,* Case No. O–NG–1269; *IAM&AW, Lodge 282 and Army, Headquarters, I Corps, Ft. Lewis, WA,* Case No. O–NG–1277; *NAGE, Local R14–5 and Pueblo Depot Activity,* Case No. O–NG–1286; and *AFGE, Locol 2185 and Army, Tooele Army Depot, Tooele, Utah,* Case No. O–NG–1288.

The proposals in these cases include the following:

A. Frequency of Testing.

The parties agree that employees in sensitive positions defined by AR 600–85 (Army Regulation 600–85, "Alcohol and Drug Abuse Prevention and Control Program") may be directed to submit to urinalysis testing to detect presence of drugs only when there is probable cause to suspect the employees have engaged in illegal drug abuse.

B. Testing Methods and Procedures.

The parties agree that methods and equipment used to test employee urine samples for drugs be the most reliable that can be obtained.

C. Testing Methods and Procedures.

The employer agrees that the following procedure will be utilized to assure drug testing is reliable:

1. Upon direction of management under terms of Section 2 above, affected employees will report to designated location to provide urine sample.

2. *The Employer ogrees to provide safeguards to assure the urinalysis testing for affected employees is not performed by unqualified or uncertified operotors or test personnel.*

3. *Upon "positive" reading of urine sample indicating presence of illegal/controlled substance, a 2nd testing will be accomplished upon the same sample.*

4. *If the 2nd test confirms results of the 1st test, employee will be notified to return to the designated site the next work day to provide a second urine sample.*

5. *Second urine sample will be subject to same test os first somple, which will be testing for identical substance as first 3 tests. "Positive" results will ogain be verified by a second test.*

6. *Upon confirmation of presence of illegal/controlled substance in urine sample, the sample will be submitted to Army testing labs at site determined by employer for refined testing to confirm results of field tests at employer locotion.*

7. *If employee urine somple leaves worksite (RIA), the employee shall have the option of retaining a portion of the sample for freezing and later use in case of inadvertent break in chain of custody or loss of identification of samples.*

8. All samples will be subject to strict chain of custody as outlined in appendix H to AR 600–85.

9. *At each and every step of testing the employee has the option to have o urinolysis test by on independent lob ot his/her cost utilizing the existing sample or o new somple. If independent testing refutes employer results, employee will be reimbursed for any cost ossocioted with testing process.*

(Only the above italicized portions (items 2, 3, 4, 5, 6, 7, and 9) are in dispute).

D. Safeguarding of Information.

1. The parties agree that information concerning results of field tests will be held in strict confidence and will be released to only those officials of the employer that have an absolute need to know.

2. Information will normally be retained by testing personnel until 4 "positive" results have been determined. At such time, the supervisor and other management officials involved in possible discipline/adverse action or other personnel actions will be provided with such information.

(All of the above proposals are at issue in Case O–NG–1269).

E. No bargaining unit employee will be requested, required or compelled to provide a urine sample in the presence of any observer or under the surveillance of any observing device (overt, covert, mechanical, technical, or otherwise). The employer will provide and maintain a sanitary restroom facility so in the event a bargaining unit employee provides a urine sample, such sample will be provided in absolute and total privacy.

F. No employee will be requested or required, as a condition of employment to sign or complete any document or form or provide any oral or written statement either agreeing to compliance with any civilian drug abuse testing, or waiving said employee's right to decline participation in any civilian drug abuse testing.

G. No bargaining unit employee will be screened under any Civilian Drug Abuse Testing Program.

(All the above proposals are at issue in Case O–NG–1286).

In deciding these cases the Authority must resolve which, if any, rights reserved to management under 5 U.S.C. 7106(a), are affected by the Union proposals. To what extent are the Union's proposals "procedures" or "appropriate arrangements" under 5 U.S.C. 7106(b)?

The Authority believes evidence and/or argument on the following questions will be necessary and helpful in addressing the issues in these cases:

1. To what extent is the negotiability of the Union proposals affected by the nature of the positions held by employees to be made subject to the random drug testing? Does limiting the scope of the testing to certain categories of employees engaged in security-sensitive work affect negotiability?

2. To what extent does scientific evidence concerning the reliability of drug testing procedures (particularly the enzyme multiplied immunoassay technique [EMIT], gas chromotography/mass spectrometry [GC/MS] and radioimmunoassay [RIA]) affect the negotiability of the various proposals?

3. Assuming *orguendo* that one or more of the Union's proposals may properly be viewed as an "appropriate arrangement" for adversely affected employees, to what extent does that proposal(s) interfere with a right reserved to management? What considerations should apply under the "excessive interference" test enunciated by the Authority in *NAGE R14–87 and Kansas Army Notionol Guard,* 21 FLRA No. 4 (1986)?

4. Assuming *orguendo* that a drug testing policy relates to an agency's right "to determine . . . internal security practices of the agency," to what extent is the negotiability of the proposals affected by the availability to the agency of alternative methods for assuring internal security? To what extent is the presence, or absence, of evidence of breaches of security in the past relevant to this determination?

5. To what extent does the precise nature and extent of the consequences to an individual employee of a "positive" test result affect the negotiability of the Union's proposal(s)?

6. Testing of employees for indication of drug use has been proposed and has occurred in a wide-range of industrial settings (rail carriers, professional sports, public law-enforcement agencies, etc.). What, if any, legal precedents have been established under these initiatives? How does such precedent impact on the negotiability of union proposals concerning drug testing of Federal employees?

7. What, if any, other legal issues under the Federal Service Labor-Management Relations Statute (5 U.S.C. 7101, *et seq.*) are raised by agency plans

Federal Labor Relations Authority

News Release

Washington, D.C. 20424

August 21, 1986 — Immediate Release

INFORMATION ANNOUNCEMENT

The Federal Labor Relations Authority has announced the appointment of its third member, Ms. Jean McKee. Ms. McKee comes to the Authority from the Federal Mediation and Conciliation Service (FMCS) where she served as the Executive Director since March 1983. She was responsible for the Arbitration Services Division and Labor-Management Grants Program, as well as directing the agency's overall management functions.

Ms. McKee entered federal public service in 1967 when she joined the staff of the late Senator Jacob K. Javits, becoming his Administrative Assistant in 1973 and remaining until 1975. In 1976, she received her first Presidential appointment to serve as the Deputy Administrator of the American Revolution Bicentennial Administration, later succeeding the Honorable John W. Warner as Administrator until the conclusion of the program in 1977. During 1978 Ms. McKee was Chief of Staff to the Minority Leader of the New York State Assembly and in 1979 received her second Presidential appointment to serve a three year term on the Advisory Commission on Public Diplomacy which had oversight of the United States Information Agency (USIA).

Ms. McKee has also enjoyed a distinguished career in the private sector. From 1980 through 1983 she was Director of Government Relations for the General Mills Restaurant Group. She also has been a board member of a major life insurance company; partner and treasurer of a public relations and public opinion polling firm, and has performed a variety of research for major corporate clientele. In addition to her professional career, she has dedicated her services on a volunteer basis to a variety of educational, political, civic and professional organizations.

Ms. McKee earned her degree in Political Science at Vassar College and completed the Graduate School of Business Winter Executive Program of the University of Southern California. Ms. McKee was born in Connecticut and currently resides in Washington, D.C.

Federal Labor Relations Authority

Washington, D.C. 20424

INFORMATION ANNOUNCEMENT JUNE 12, 1986

The following notice was published in the Federal Register (Vol. 51, No. 113) on Thursday, June 12, 1986 beginning on page 21416:

FEDERAL LABOR RELATIONS AUTHORITY

Federal Employees; Disclosure of Home Addresses to Exclusive Representatives Under the Federal Service Labor-Management Relations Statute

AGENCY: Federal Labor Relations Authority.

ACTION: Notice of opportunity to file amicus briefs in certain unfair labor practice proceedings in which agency management has refused to provide exclusive representatives with the names and home addresses of all unit employees and requested pursuant to section 7114 of the Statute.

SUMMARY: The Federal Labor Relations Authority provides an opportunity for all interested agencies, labor organizations, and other interested persons to file amicus briefs on significant issues of law common to a number of cases pending before the Authority involving the refusal of agency management, in the face of requests made pursuant to section 7114(b)(4) of the Statute, to provide labor organizations with the names and home addresses of employees in units of exclusive recognition.

DATE: Amicus briefs submitted in response to this notice will be considered if received by July 14, 1986.

ADDRESS: All briefs shall be captioned "Home Addresses Cases, Amicus Brief and shall contain separate, numbered headings for eash issue discussed. An original and four (4) copies of each amicus brief, with any enclosures, on 8½ x 11 inch size paper, shall be addressed to Jacqueline R. Bradley, Executive Director, FLRA Attn: Home Addresses Cases, 500 C Street SW., Washington, DC 20424.

FOR FURTHER INFORMATION CONTACT: Harold Kessler, Director of Case Management, Federal Labor Relations Authority, (202) 382-0715.

SUPPLEMENTARY INFORMATION: The Federal Labor Relations Authority currently has before it a number of cases involving the refusal of agency management to provide labor organizations with the names and home addresses of employees in units of exclusive recognition. Some of these cases are before the Authority because of exceptions to decisions issued by Administrative Law Judges in unfair labor practice (ULP) cases. Three other cases involve Authority decisions which were awaiting judicial review when the Authority sought and was granted remand. Remand was sought in order for the Authority to address whether disclosure of the names and home addresses of unit employees requested by each of the unions under section 7114(b)(4) of the Statute was or was not subject to the "routine use" exception of the Privacy Act, 5 U.S.C. 552a(b)(3), and such other issues arising under the Statute as might be appropriate. The "routine use" issue had not been addressed by the Authority in its decisions. In another case, *American Federation of Government Employees, Local 1760* v. *FLRA*, No. 85-4144 (2d Cir. March 24, 1986), reviewing 19 F.L.R.A. No. 108, the United States Court of Appeals for the Second Circuit denied the Authority's motion to have the case remanded and issued a decision reversing the Authority's decision. The court reversed the Authority's conclusion that the agency did not commit a ULP by refusing to furnish the names and home addresses of unit employees to their exclusive representative as requested, and remanded the case to the Authority for further action.

The authority has identified several cases, listed below, which address significant issues of law common to a large number of these cases and finds it appropriate to provide for the filing of amicus briefs addressing these issues. These cases include the following:

Department of Health and Human Services, Social Security Administration, Case No. 2-CA-50222;

Department of Health and Human Services, Social Security Administration, Case No. 2-CA-50188;

Department of the Air Force, Scott Air Force Base, Illinois, Case No. 5-CA-40232;

Department of the Navy, Portsmouth Naval Shipyard, Portsmouth, New Hampshire, Case No. 1-CA-40290;

Department of Health and Human Services, Social Security Administration, Case No. 4-CA-40452,

Farmers Home Administration Finance Office, St. Louis, Missouri, 19 F.L.R.A. No. 21 (Case No. 7-CA-30560) (This case is before the Authority pursuant to the Authority's remand motion, which was granted by the U.S. Court of Appeals for the District of Columbia Circuit.);

Defense Mapping Agency Aerospace Center, St. Louis, Missouri, 19 F.L.R.A. No. 85 (Case No. 7-CA-20482) (This case is before the Authority pursuant to the Authority's remand motion, which was granted by the U.S. Court of Appeals for the Eighth Circuit.);

Philadelphia Naval Shipyard, 19 F.L.R.A. No. 107 (Case No. 2-CA-40243) (This case is before the Authority

pursuant to the Authority's remand motion, which was granted by the U.S. Court of Appeals for the District of Columbia Circuit);

National Labor Relations Board Union and National Labor Relations Board, Office the General Counsel and the Board, Case No. 0–NG–900 involving the negotiability of one proposal which would require management to furnish the exclusive representative with the names and home addresses of all unit employees on an annual basis).

The Authority will receive and consider amicus briefs from all interested agencies, labor organizations, and other interested persons concerning the issues relevant to these cases. Among these issues are the following:

I. Is a labor organization entitled, under section 7114(b)(4) of the Statute, to the names and home addresses of the unit employees for whom it is the exclusive representative?

II. What standards are to be applied in determining whether or when a labor organization needs the names and home addresses of unit employees in order to communicate adequately with the employee it is responsible for exclusively representing; that is, when are the names and home addresses of unit employees "necessary" within the meaning of section 7114(b)(4) of the Statute?

Some of the Administration Law Judges who have issued decisions concerning this issue found that other traditional means of communication available to labor organizations, such as bulletin boards and handouts, were insufficient and that home addresses were necessary to enable the exclusive representatives to communicate adequately with the employees they represent. Without using subjective measurements, how can the adequacy of these means of communication be evaluated? Is adequacy a valid test?

III. Is disclosure of the names and home addresses of unit employees to their exclusive representatives precluded by the provisions of the Privacy Act?

The Privacy Act limits the disclosure of any information contained in an agency "record" within a "system of records that is retrieved by reference to an individual name or some other identifier." The Act contains two major exceptions relevant to this issue.

A. Court decisions involving the disclosure of information from personnel files maintained by the Federal government, in discussing both Privacy Act and Freedom of Information Act considerations, often indicate the need to balance any infringement of the individual's privacy rights against the public interest in disclosing such information. This balancing test is embodied in exemption (b)(6) of the Freedom of Information Act, 5 U.S.C. 552(b)(6). The Authority has applied this balancing test in other cases where information was sought by exclusive representatives.

(1) How should such a balance be weighed in determining whether the names and home addresses of unit employees are discloseable to their exclusive representative?

B. The Privacy Act, 5 U.S.C. 552a(a)(7), defines a "routine use" as "the use of such record for a purpose which is compatible with the purpose for which it is collected." The Office of Personnel Management (OPM) maintains the personnel records of Federal employees, which would be the most readily identifiable source for employees' names and home addresses. OPM regulations define the routine uses of its personnel records. One routine use is the disclosure of "information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions." 47 FR 16490–16491 (April 16, 1982).

(1) Is the disclosure of unit employees' names and home addresses to an exclusive representative a "routine use" within these terms?

(2) If names and home addresses may be disclosed as a routine use, may the disclosing agency place any limitations on the use of this information?

(3) Must the disclosing agency first determine that names and home addresses are "relevant and necessary" to the labor organization's duties as an exclusive representative within the terms of the routine use regulations in order to be entitled to disclose such information?

(4) To what extent must a labor organization, at the time of its request, supply the disclosing agency with an explanation as to why it believes that names and home addresses are "relevant and necessary" to the labor organization's duties within those same terms? May an agency determine that names and home addresses are always relevant and necessary to the exclusive representative's duties or must such determination be made on a case by case basis? May such a determination be made by the Authority?

(5) What is the relationship between the standard to be used in determining whether information is "necessary" under section 7114(b)(4) of the Statute and the standard to be used in determining whether information is "relevant and necessary" under the routine use regulations issued by the Office of Personnel Management?

(6) Where an agency's determinations that the requested information is not relevant and necessary under the routine use regulations become the subject of a subsequent ULP complaint, what standard should the Authority apply in reviewing such determinations?

Dated: June 9, 1986.

For the Authority.

Jacqueline R. Bradley,

Executive Director.

[FR Doc. 86–13288 Filed 6–11–86; 8:45 am]

BILLING CODE 6727-01-M

Federal Labor Relations Authority

News Release

Washington, D.C. 20424

Immediate Release

April 1, 1986

INFORMATION ANNOUNCEMENT

The Federal Labor Relations Authority last week issued a lead decision involving awards of attorney fees by arbitrators under the Back Pay Act. In its decision, Naval Air Development Center, Department of the Navy and American Federation of Government Employees, Local 1968, AFL-CIO, 21 FLRA No. 25, the Authority upheld an arbitrator's award of attorney fees except for a portion awarding reimbursement photocopying expenses. The underlying grievance which gave rise to the arbitration award involved hazardous duty pay for employees exposed to asbestos in the workplace.

The Members, in separate concurring opinions, discussed in detail the requirements of the Back Pay Act in awarding attorney fees, including the requirement that the award of fees must be "warranted in the interest of justice," and provided guidance to advocates and arbitrators in the application of this standard. The concurring opinions further underscored the requirement for a fully articulated, reasoned arbitrator's decision setting forth the specific findings supporting the determination on each pertinent statutory requirement. Both Members refused to endorse or sanction an arbitrator's incorporation by reference of arguments by counsel representing one of the parties as justification for a finding of an award of fees. Both Members stated that the requirement for a fully articulated, reasoned decision requires independent, objective analysis, findings, and conclusions by an arbitrator in order to support an award of fees.

Concurrent with the issuance of Naval Air Development Center, the Authority also granted a request for reconsideration of its decision in 20 FLRA No. 87. In that decision, the Authority had set aside an award of attorney fees because the arbitrator failed to provide a fully articulated, reasoned decision setting forth specific findings on each pertinent statutory requirement. In its reconsideration Order, the Authority remanded the case to the parties to obtain clarification and interpretation by the arbitrator of his award of attorney fees to articulate fully specific findings. The Authority noted that in the future, deficient awards of attorney fees will be set aside or modified as appropriate.

Federal Labor Relations Authority

News Release

Washington, D.C. 20424

INFORMATION ANNOUNCEMENT February 7, 1986

The Federal Labor Relations Authority today issued its lead decision for cases involving the negotiability of proposals which concern "appropriate arrangements" for employees adversely affected by the exercise of management rights under section 7106(b)(3) of the Federal Service Labor-Management Relations Statute.

In that decision, National Association of Government Employees, Local R14-87 and Kansas Army National Guard, 21 FLRA No. 4 (1986), the Authority determined that such proposals are negotiable unless the arrangements excessively interfere with the exercise of management rights. The Authority stated that, in determining whether a union proposal excessively interferes with management rights, it would weigh the competing practical needs of employees and managers. The Authority's decision adopted the approach taken by the United States Court of Appeals for the District of Columbia Circuit in American Federation of Government Employees, AFL-CIO, Local 2782 v. Federal Labor Relations Authority, 702 F.2d 1183 (1983).

The Authority explained that in order to demonstrate that a proposal is negotiable under section 7106(b)(3) a union must first show that the proposal is, in fact, intended to be an arrangement for employees adversely affected by management's exercise of its rights. In particular, the union should identify the management rights which produce the alleged adverse effects, the effects on employees, and the manner in which those effects are adverse. The union must also show how the proposal is intended to address or compensate in some manner for the adverse effects.

The Authority also outlined some of the factors it would consider in weighing the competing practical needs of employees and managers to determine whether a proposed arrangement excessively interferes with the exercise of management's right or rights. Factors specifically enumerated are: (1) the nature and extent of the impact experienced by the adversely affected employees; (2) the extent to which the circumstances giving rise to the adverse effects are within an employee's control; (3) the nature and extent of the impact of the proposal on management's ability

to deliberate and act pursuant to its statutory rights; (4) whether the negative impact of the proposed arrangement on management's rights is disproportionate to the benefits to employees to be derived from that arrangement; and (5) the effect of the proposal on effective and efficient government. The Authority noted that these factors were not intended to be all-inclusive or to be applied in a mechanistic manner. Rather, the Authority stated, it would consider all the facts and circumstances in a case and identify and apply additional factors as appropriate. The Authority indicated that it expected the parties to future cases involving proposed appropriate arrangements to address relevant considerations as specifically and fully as possible.

Federal Labor Relations Authority

News Release

500 C Street, SW.
Washington, D.C. 20424

INFORMATION ANNOUNCEMENT January 31, 1986

The Federal Labor Relations Authority today issued its lead decision for cases involving the negotiability of proposals seeking payment of travel expenses and per diem allowances incurred by employees using official time in the conduct of labor management relations. The decision is the first substantive decision issued by the Authority since Jerry L. Calhoun was appointed Chairman.

The lead case, National Treasury Employees Union and Department of the Treasury, U.S. Customs Service, 21 FLRA No. 2 (1986), was before the Authority on remand in light of the Supreme Court's decision in Bureau of Alcohol, Tobacco and Firearms (BATF) v. FLRA, 464 U.S. 89 (1983). In its decision, the Authority found that a proposal seeking payment of travel expenses incurred while on official time concerned "a condition of employment which is within the Agency's administrative discretion, and is not inconsistent with law or regulation." The Authority concluded that the proposal was negotiable.

Federal Labor Relations Authority

News Release

Washington, D.C. 20424

January 30, 1986

Jerry L. Calhoun assumed the duties as Chairman of the Federal Labor Relations Authority on December 16, 1985, after Presidential nomination and Senate confirmation. The Authority is an independent agency in the Executive Branch charged with providing leadership in establishing policies and guidance relating to the Federal Service Labor-Management Relations Statute. Additionally, the Authority plays an adjudicative role in the resolution of federal sector labor relations matters. As Chairman, Mr. Calhoun is the chief executive and administrative officer of the Federal Labor Relations Authority. In his capacity as Chairman of the Authority, Mr. Calhoun also serves as Chairperson of the Foreign Service Labor Relations Board which administers the conduct of elections and resolution of labor management disputes as they relate to foreign service personnel.

Prior to his appointment to the Authority, Mr. Calhoun was Principal Deputy Assistant Secretary of Defense for Manpower, Installations and Logistics. Following a major reorganization, Mr. Calhoun became the Acting Assistant Secretary of Defense for Force Management and Personnel (formerly Manpower, Installations and Logistics). His personnel and force management responsibilities included military and civilian personnel policy and management, labor-management relations, recruiting and training of active and Reserve forces, and mobilization planning. Additionally, he was responsible for various programs within the Defense Department involving energy, environment, safety, occupational health, equal opportunity and education of military and civilian dependents overseas as well as all logistics issues, including planning and construction of installation facilities worldwide. Prior to that assignment, Mr. Calhoun served as Deputy Assistant Secretary of Defense for Civilian Personnel Policy and Requirements, also with the Department of Defense.

Before his appointment to the Federal service, Mr. Calhoun was Manager of Industrial and Labor Relations with the Boeing Commercial Airplane Company in Seattle, Washington, where he held a variety of personnel management positions spanning a period of 14 years.

In addition to experience in private industry, he has taught on the faculty of the University of Washington School of Business in the areas of labor-management relations and human resource systems.

Mr. Calhoun was born in Ludlow, Mississippi on September 9, 1943. He graduated from Seattle University in 1967 with a B.A. degree in Political Science and Economics and received an M.A. degree from the University of Washington in Financial Management. Additionally, he has done post graduate work at Arizona State University School of Law and Public Administration, Stanford University School of Business Administration and the University of Michigan School of Business Administration.

Federal
Labor Relations
Authority

Washington, D.C. 20424

IMMEDIATE RELEASE October 1, 1985

AUTHORITY COMPLETES MOST PRODUCTIVE YEAR EVER

The Federal Labor Relations Authority in Fiscal Year 1985 closed the largest number of cases ever in a single year, Acting Chairman Henry B. Frazier III, announced today. Between October 1, 1984 and September 30, 1985, the Authority closed 822 cases thereby reducing the number of pending cases from 737 at the beginning of the fiscal year to 460 at the end. This reduction was accomplished even though 545 new cases were filed with the Authority during the same period.

According to Frazier, "This continues the trend which was begun in the previous fiscal year when the Authority closed 750 cases. In addition to having just completed our best year ever, during FY '85 we also had our best first quarter of any fiscal year when we closed 211 cases and our best quarter of any quarter ever, when, during the third quarter, we closed 268 cases. The production during the first quarter gave us a head start on the year and the tremendous effort during the remainder of the year pushed us over the top. This accomplishment enabled the agency to exceed its goal of closing 780 cases, a goal which was established during the development of agency objectives before the year began."

"I believe the Authority is at long last reaching the point where cases can be assigned and work can begin on them immediately after all documents have been filed by the parties. I hope that the elimination of so much of the older case backlog will enable us now to develop a smoothly functioning process so that cases will move in a steady stream through the Authority and decisions will issue in less time than in the past. I attribute this outstanding achievement to dedication and hard work of everyone at the Authority," Frazier said.

Frazier added, "Over the past couple of years we have made every effort to increase the efficiency and productivity of the agency through a series of management improvement initiatives involving personnel in every aspect of our operations. Among these initiatives were organizational changes and the elimination and/or compressing of levels of review; increasing the availability of electronic legal research tools; utilizing special 'task forces' to concentrate on the resolution of older cases; standardization of the format of decisions to the maximum extent; refinement of the computerized case tracking system, including increasing the capability of our automated

data base, to permit the early identification and resolution of case processing problems and to enhance the overall management of the caseload and the allocation of resources; and additions of word processing equipment and improvements in its use. Furthermore, many cases are being processed faster than in the past because they can be resolved on the basis of the extensive precedent developed during the first five years of the Authority's existence. But, the most important factor has been the renewed determination of personnel at all levels within the agency to eliminate the 'backlog' so that all cases can be actively processed through the case management system on a timely and current basis."

# # #

Federal Labor Relations Authority

Washington, D.C. 20424

INFORMATION ANNOUNCEMENT August 20, 1985

NOTICE OF PUBLICATION OF FLRA VOLUME 17

The Federal Labor Relations Authority has prepared for publication by the Government Printing Office its seventeenth bound volume of decisions. This volume includes the decisions of the Authority that were issued during the following period:

VOLUME	PERIOD COVERED	APPROXIMATE PAGES	FLRA REQUISITION NUMBER
17	January 1, 1985 through May 13, 1985	1222	5-00104

This publication, entitled Decisions of the Federal Labor Relations Authority, Volume 17 may be obtained by Federal agencies on a pro-rated cost basis with the Authority by "riding" the FLRA Requisition Number listed above. In order to avoid duplicate orders, agency district and regional offices should request their agency's national headquarters in Washington, D.C. to order the volume.

Agency rider requisitions (Standard Form 1) should be submitted to the Government Printing Office, Washington, D.C. 20401, by September 30, 1985.

The publication will be offset printed on both sides of white, approximately 8" x 10 1/4", 100 lb. book stock with hard binding. It will have the approximate number of pages indicated above.

Agencies are urged to submit requisitions to the Government Printing Office because the Superintendent of Documents will not stock large quantities of the publication and the Authority will not stock any books other than for its own staff needs.

Other organizations and individuals may order the publication directly from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, when it becomes available. Further information concerning orders will be provided by the Authority in an Information Announcement at that time.

Federal Labor Relations Authority

Washington, D.C. 20424

INFORMATION ANNOUNCEMENT JULY 9, 1985

Acting Chairman Henry B. Frazier III and Member William J. McGinnis, Jr., announced today that the third quarter of Fiscal Year 1985, which closed on June 30, was the most productive quarter in the Authority's history. The agency closed 268 cases in the third quarter. As a result, the Authority has reduced the number of pending cases to 560 compared with 711 at the beginning of FY'85 and with 859 which were pending exactly one year before on July 1, 1984. This achievement demonstrates the total commitment of everyone at the Authority to maintaining a high level of production, thereby achieving the goal of eliminating the backlog of older unresolved cases, they said.

Federal Labor Relations Authority

Washington, D.C. 20424

INFORMATION ANNOUNCEMENT June 21, 1985

NOTICE OF PUBLICATION OF FLRA VOLUMES 15 AND 16

The Federal Labor Relations Authority has prepared for publication by the Government Printing Office its fifteenth and sixteenth bound volumes of decisions. These volumes include the decisions of the Authority that were issued during the following period:

VOLUME	PERIOD COVERED	APPROXIMATE PAGES	FLRA REQUISITION NUMBER
15	June 1, 1984 through August 31, 1984	1198	5-00094
16	Sept. 1, 1984 through December 31, 1984	1330	5-00095

These publications, entitled Decisions of the Federal Labor Relations Authority, Volume 15 and Decisions of the Federal Labor Relations Authority, Volume 16 may be obtained by Federal agencies on a pro-rated cost basis with the Authority by "riding" the FLRA Requisition Numbers listed above. In order to avoid duplicate orders, agency district and regional offices should request their agency's national headquarters in Washington, D.C. to order the volumes.

Agency rider requisitions (Standard Form 1) should be submitted to the Government Printing Office, Washington, D.C. 20401, by July 31, 1985.

The publication will be offset printed on both sides of white, approximately 8" x 10 1/4", 100 lb. book stock with hard binding. They will have the approximate number of pages indicated above.

Agencies are urged to submit requisitions to the Government Printing Office because the Superintendent of Documents will not stock large quantities of the publications and the Authority will not stock any books other than for its own staff needs.

Other organizations and individuals may order the publications directly from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, when it becomes available. Further information concerning orders will be provided by the Authority in an Information Announcement at that time.

Federal Labor Relations Authority

News Release

500 C Street, SW.
Washington, D.C. 20424

IMMEDIATE RELEASE April 25, 1985

General Counsel John C. Miller announced today the selection of Mr. Robert J. Perry as Associate General Counsel.

Mr. Perry has served as Assistant Chief Counsel to Chairman Donald L. Dotson of the National Labor Relations Board (NLRB) and as Chief Counsel to Mr. Miller when he served as Chairman of the NLRB. Mr. Perry's distinguished career with the NLRB began in August 1958 and has included a number of awards for sustained superior performance.

Mr. Perry has a Bachelor of Arts Degree from Providence College, a J.D. from Catholic University and an L.L.M. from Georgetown University. In addition, Mr. Perry has taught labor law at Catholic University.

He is a member of the District of Columbia Bar and has been admitted to practice before the United States Court of Appeals for the District of Columbia.

Federal Service Impasses Panel

500 C Street, SW. Washington, D.C. 20424

Information Release March 19, 1985

McKELVEY AND FARR TO BE REAPPOINTED TO PANEL

On March 15, 1985, President Reagan announced his intention to reappoint Jean T. McKelvey and Thomas A. Farr as members of the Federal Service Impasses Panel. Their previous terms having expired on January 10, 1985, the President will reappoint them for 5-year terms. The seven-person Panel, an entity within the Federal Labor Relations Authority, provides assistance to Federal agencies and unions in resolving negotiation impasses.

Ms. McKelvey, who has served on the Panel since its inception in 1970, has had extensive experience as a labor arbitrator in the private and public sectors and is well known for her work as a professor of industrial and labor relations at Cornell University. Currently she serves as a member of the Mediation Advisory Committee and the Advisory Council for the Arbitration Journal of the American Arbitration Association. She is also a member of the Executive Board of the International Society for Labor Law and Social Legislation. Other positions Ms. McKelvey has held are: President of the National Academy of Arbitrators; member of various Boards of Review and Mediation; public panel member of the War Labor Board, New York Region;

and member of the New York State Board of Mediation. She is the recipient of the Distinguished Service Award of the Federal Mediation and Conciliation Service, Distinguished Alumnae Award for Public Service of Wellesley College, and the Distinguished Service Award for the Arbitration of Labor-Management Disputes of the American Arbitration Association. A graduate of Wellesley College (A.B. 1929) and Radcliffe College (M.A. 1931; PhD.,1933), Ms. McKelvey resides with her husband in Rochester, New York.

Mr. Farr has been associated with the law firm of the Maupin, Taylor, and Ellis in Raleigh, North Carolina, since 1983. Previously, he was a law clerk to the Honorable Frank W. Bullock, Jr., United States District Judge for the Middle District of North Carolina. Prior to his clerkship, Mr. Farr was with the Office of the General Counsel of the Office of Personnel Management (1982-83), and was counsel to the Senate Labor Committee and labor counsel to the Honorable John East, Senator from North Carolina (1981-82). From 1979 to 1981, Mr. Farr was a staff attorney for the National Right to Work Legal Defense Foundation in Springfield, Virginia. He graduated from Hillsdale College (Bachelor of Liberal Studies, 1976) and Emory University School of Law (J.D. 1979), and received an LL.M. in Labor Law from the Georgetown University Law Center in 1983. He is admitted to practice law in Virginia and Georgia, and is a member of the Philadelphia Society. Mr. Farr is married and resides in Raleigh, North Carolina.

Other members of the Federal Service Impasses Panel, all of whom serve on a part-time basis, are Chairman Roy M. Brewer of Tarzana, California; N. Victor Goodman of Columbus, Ohio; Robert G. Howlett of Grand Rapids, Michigan; Daniel H. Kruger of Lansing, Michigan; and Susan S. Robfogel of Rochester, New York.

For further information,

telephone (202) 382-0981.

Federal Labor Relations Authority

News Release

500 C Street, SW.
Washington, D.C. 20424

IMMEDIATE RELEASE February 22, 1985

Acting Chairman Henry B. Frazier III has announced the reappointment of two Members of the Foreign Service Impasse Disputes Panel under Chapter 10 of the Foreign Service Act of 1980. The Chairman of the Authority serves also as Chairperson of the Foreign Service Labor Relations Board.

Section 1010(a) of the Act provides that the Chairperson of the Board shall select Members of the Panel from among individuals who are knowledgeable in labor-management relations or the conduct of foreign affairs, including two members of the Foreign Service, one individual employed by the Department of Labor, one member of the Federal Service Impasses Panel, and one public member who holds no other office or position in the Government. The Chairperson of the Board sets their terms of office and determines who shall chair the Panel.

Margery F. Gootnick who serves as Chairman of the Panel has been reappointed as the public member for a three-year term expiring February 24, 1988. She will continue to serve as Chairman. Mrs. Gootnick, a labor arbitrator-mediator, has extensive experience in labor-management relations in the private sector and Federal and State public sectors. She is engaged in private law practice. She serves as a permanent arbitrator for the United Airlines-IAMAW System Board of Adjustment, the State of New York and Police Benevolent Association of New York State Police, the Niagara Building Trades Council and Niagara Engineers and Constructors, Kraft Incorporated Contested Discharge Panel, and Orleans County Sheriff's Department and Security and Law Enforcement Employees Council 82. She has been appointed to several panels concerning union matters, including the United States Postal Service Contract (expedited panel), the National Treasury Employees Union and Internal Revenue Service (disciplinary panel), and the Veterans Administration and American Federation of Government Employees (expedited panel--Batavia & Montrose VA Hospitals). She is a member of the National Academy of Arbitrators, the Industrial Relations Research Association, the American Bar Association, the New York State Bar Association, the Federal Bar Association, and the Society of Professionals in Dispute Resolution. She holds a B.A. degree from Harvard College and a LL.B. degree from Cornell Law School. She and her family reside in Rochester, New York.

Robert G. Howlett has been reappointed as the representative of the Federal Service Impasses Panel (FSIP) for a three-year term to expire on February 24, 1988. He was appointed as the FSIP member on the Panel in February 1982 after having previously acted as its Chairman and public member. A prominent labor arbitrator, Mr. Howlett served as Chairman of the FSIP from 1976 to 1978 and from 1982 to 1983. He was a member and Chairman of the Michigan Employment Relations Commission from 1963 to 1976. He also served with the National War Labor Board. Mr. Howlett is Counsel to the law firm of Varnum, Riddering, Schmidt, and Howlett in Grand Rapids, Michigan. He is also a member of the National Academy of Arbitrators, a director of the American Arbitration Association, and a member of the Michigan, District of Columbia, Illinois, New York and Tennessee Bars. A past president of the Association of Labor Relations Agencies and the Society of Professionals in Dispute Resolution, Mr. Howlett is currently a member of these organizations as well as the Industrial Relations Research Association. Mr. Howlett's publications on the subject of collective bargaining are numerous. He was born in Michigan where he has resided for most of his life and received both his B.S. and J.D. degrees from Northwestern University.

Federal Labor Relations Authority

News Release

500 C Street, SW.
Washington, D.C. 20424

IMMEDIATE PRESS RELEASE

January 2, 1985

Acting Chairman Henry B. Frazier III announced today that the Authority has ended the first quarter of FY 1985 by continuing to close cases at the record rate set in FY 1984. Between October 1 and December 31 the Authority closed 209 cases which is the largest number of cases closed by the agency in any first quarter in its history. In addition, the number of cases closed in October (69), November (67) and December (73) represents a new monthly record for each of those respective months.

"This is a fine beginning for the new fiscal year," Acting Chairman Frazier said. "I think it demonstrates that last year's record was not merely a fortuitous event. As I said at the close of the last fiscal year, 'I attribute the progress we've made in reducing our inventory of cases to improvements in our case processing system and to the dedication and perseverance of the talented people at the Authority. They have worked hard to achieve this level of effort, and they recognize the challenging job ahead of us to continue to improve the timeliness of our decisions. We shall do our best to ensure that progress will continue.' Our record for the first quarter of this year demonstrates that the people at the Authority are working to meet that commitment."

Federal Labor Relations Authority

News Release

500 C Street, SW.
Washington, D.C. 20424

IMMEDIATE PRESS RELEASE September 4, 1984

On September 1, 1984, the White House announced that the President has designated Henry B. Frazier III as Acting Chairman of the Authority. Barbara Mahone who was Chairman of the Authority resigned on August 31 to return to the private sector. Frazier has been a Member of the Authority since its inception.

Prior to his appointment to the Authority, Frazier was with the Federal Labor Relations Council (the predecessor agency of the Authority) for 9 years, serving the last 6 of those years as its Executive Director. Previously he had served as Deputy Executive Director and as Chief of the Program Division. While serving as Executive Director of the Council, he received a Special Citation for Exceptional Performance from the Director of the Office of Management and Budget, the Chairman of the Civil Service Commission and the Secretary of Labor. Before joining the Council, Frazier had spent 11 years in personnel administration with the Department of the Army, serving in both operating organizations in the field and in staff organizations in the Pentagon. His last position with Army, immediately prior to joining the Council, was Chief of Civilian Personnel Policy and Civil Rights in the Office of the Assistant Secretary for Manpower. While with Army he received from the Secretary of the Army the Exceptional Civilian Service Award--the Department's highest award for civilian personnel--and the first annual W. H. Kushnick Award for Outstanding Achievement in Personnel Administration in the Department.

Frazier is an attorney and has a J.D. with Honors from George Washington University Law School and an LL.M. in Labor Law from Georgetown University Graduate Law Center. Frazier received a B.A. with Honors in Political Science from the University of Virginia and is a member of the National Board of Managers and the National Vice President of the University of Virginia Alumni Association. He is a member of Phi Beta Kappa, the Order of the Coif, the Virginia Bar, the Bar of the District of Columbia, the Bar of the Supreme Court of the United States, the American Bar Association and the Society of Federal Labor Relations Professionals. He is an Air Force veteran.

Federal Labor Relations Authority

Washington, D.C. 20424

INFORMATION ANNOUNCEMENT September 6, 1984

REMINDER OF PUBLICATION OF FLRA VOLUMES 13 AND 14

Agencies are reminded (previously announced on August 21, 1984) that they have until September 28, 1984 to ride the Federal Labor Relations Authority's requisition for the following bound volumes:

VOLUME	PERIOD COVERED	APPROX. PAGES	FLRA REQUISITION NUMBER
13	September 1, 1983 through January 31, 1984	850	4-00149
14	February 1, 1984 through May 31, 1984	940	4-00158

These publications, entitled Decisions of the Federal Labor Relations Authority, Volume 13 and Decisions of the Federal Labor Relations Authority, Volume 14 may be obtained by Federal agencies on a pro-rated cost basis with the Authority by "riding" the FLRA Requisition Numbers listed above. In order to avoid duplicate orders, agency district and regional offices should request their agency's national headquarters in Washington, D.C. to order the volumes.

Agency rider requisitions (Standard Form 1) should be submitted to the Government Printing Office, Washington, D.C. 20401.

Both publications will be offset printed on both sides of white, approximately 8" x 10 1/4", 100 lb. book stock with hard binding. They will have the approximate number of pages indicated.

Agencies are urged to submit requisitions to the Government Printing Office because the Superintendent of Documents will not stock large quantities of the publications and the Authority will not stock any books other than for its own staff needs.

Other organizations and individuals may order the publications directly from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, when it becomes available. Further information concerning orders will be provided by the Authority in an Information Announcement at that time.

Federal Labor Relations Authority

Washington, D.C. 20424

INFORMATION ANNOUNCEMENT September 6, 1984

The following request was published on page 35096 of the September 6, 1984 issue of the Federal Register (Vol. 49, No. 174):

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Ch. XIV

Processing of Cases

AGENCY: Federal Labor Relations Authority.

ACTION: Request for comments; extension of comment period.

SUMMARY: In order to assure agencies, unions and interested persons ample opportunity to submit written proposals concerning possible modifications to the Federal Labor Relations Authority's case processing procedures, it has been decided to extend to September 21, 1984 the period for written comments.

COMMENT DATE: Written comments must be received by the Authority on or before September 21, 1984..

ADDRESS: Comments should be submitted to Harold D. Kessler, Director, Office of Case Management, Federal Labor Relations Authority, 500 C Street SW., Washington, D.C. 20424

FOR FURTHER INFORMATION CONTACT: Harold D. Kessler, Director, Office of Case Management, Federal Labor Relations Authority, 500 C Street SW., Washington, D.C. 20424; (202) 382-0711.

SUPPLEMENTARY INFORMATION: Questions raised relating to the immediacy of the review of case processing procedures and subsequent open meetings in view of recent Authority changes at the Member level prompt us to reiterate our June 20, 1984 notice published in the proposed rules section of the **Federal Register** (49 FR 25243). The Authority fully intends to move forward on the review of case processing procedures. Accordingly, in order to assure that all parties have ample opportunity to submit written proposals concerning possible modifications to the Authority's case processing procedures, it has been decided to extend to September 21, 1984 the period for written comments.

List of Subjects in 5 CFR Ch. XIV

Administrative practice and procedure, Government employees, Labor-management relations.

Dated: August 31, 1984.

Barbara J. Mahone,

Chairman.

Ronald W. Haughton,

Member.

Henry B. Frazier III,

Member.

Federal Labor Relations Authority.

[FR Doc. 84-23623 Filed 9-5-84; 8:45 am]

BILLING CODE 6727-01-M

Federal Labor Relations Authority

Washington, D.C. 20424

INFORMATION ANNOUNCEMENT May 31, 1984

The following interim amendment to the Authority's rules and regulations was published in the Federal Register (Vol. 49, No. 106) on Thursday, May 31, 1984, page 22623:

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2425

Civil Service Miscellaneous Amendments Act of 1983: Implementation; Processing of Cases: Review of Arbitration Awards

AGENCY: Federal Labor Relations Authority.

ACTION: Interim amendment to rules and regulation: request for comments.

SUMMARY: This interim amendment to the rules and regulations of the Authority governing review of arbitration awards is necessary to implement a provision of the Civil Service Miscellaneous Amendments Act of 1983. The Act, which was signed into law on March 2, 1984, amended section 7122(b) of the Federal Service Labor-Management Relations Statute by changing the starting date of the 30-day period for filing exceptions to an arbitrator's award. Prior to the amendment, the starting date was the date of the award. The amendment provides that the time period will begin on the date the award is served on the party by the arbitrator.

DATES: Effective Date: March 2, 1984.

Comment Date: Written comments received by June 29, 1984, will be considered in promulgation of final rules and regulations on this subject.

ADDRESS: Comments should be mailed to Jerome P. Hardiman, Assistant Chief Counsel for Arbitration, Federal Labor Relations Authority, 500 C Street, SW., Washington, D.C. 20424.

FOR FURTHER INFORMATION CONTACT: Jerome P. Hardiman, Assistant Chief Counsel for Arbitration, Federal Labor Relations Authority, 500 C Street, SW., Washington, D.C. 20424, (202) 382-0748.

SUPPLEMENTARY INFORMATION: The Civil Service Miscellaneous Amendments Act of 1983 (Pub L. No. 98-224, section 4, 98 Stat. 47, 48 (1984)) amended section 7122(b) of the Federal Service Labor-Management Relations Statute (5 U.S.C. 7122(b)) to provide that if no exception to an arbitrator's award is filed with the Authority under 5 U.S.C. 7122(a) during the 30-day period beginning on the date the award is served on the parties, the award shall be final and binding. Prior to the amendment, the time limit began on the date of the award. Therefore, § 2425.1(b) of the Authority's rules and regulations, which implements section 7122(b) of the Statute, must be amended accordingly.

In applying the interim amended regulation, the Authority will first seek to determine the date the award was served on the party filing the exceptions and the method of service used by the arbitrator. As provided in § 2429.27(d) of the rules and regulations, date of service or date served is the day when a document is either deposited in the U.S. mail or delivered in person. In cases where the arbitrator serves the award by mailing it to the party, a copy of the postmarked envelope, or if no postmark is available, a copy of a dated transmittal letter from the arbitrator or other such evidence, will be used to establish the date of service. Further in cases where the award is served on the party by mail, five (5) days will be added to the prescribed filing period pursuant to § 2429.22 of the rules and regulations. In cases where the arbitrator delivers the award in person to the filing party, the date of delivery will be considered the date of service and the five (5) days will not be added to the prescribed filing period.

This interim amended regulation does not affect § 2429.21 of the rules and regulations, under which any exception to an arbitrator's award must be received by the Authority before the close of business on the last day of the prescribed time limit. It also does not affect § 2429.23(d) of the rules and regulations, under which the time limit for filing exceptions to an arbitrator's award may not be extended or waived by the Authority. The interim amendment will be applied to all exceptions to arbitration awards pending or filed on or after March 2, 1984.

List of Subjects in 5 CFR Part 2425

Administrative practice and procedure, Government employees, Labor-management relations.

PART 2425—REVIEW OF ARBITRATION AWARDS

Section 2425.1(b) of the final rules and regulations of the Authority is revised to read as follows:

§ 2425.1 Who may file an exception; time limits for filing; opposition; service.

* * * * *

(b) The time limit for filing an exception to an arbitration award is thirty (30) days beginning on the date the award is served on the filing party.

* * * * *

(5 U.S.C. 7122(b) and 7134)

Dated: May 25, 1984.

Barbara J. Mahone,
Chairman.

Ronald W. Haughton,
Member.

Henry B. Frazier III,
Member, Federal Labor Relations Authority.

[FR Doc. 84-14498 Filed 5-30-84; 8:45 am]

BILLING CODE 6727-01-M

7/10/84

FEDERAL LABOR RELATIONS AUTHORITY

BOUND VOLUMES

FOR SALE BY THE SUPERINTENDENT OF DOCUMENTS

The following is a list of the bound volumes entitled Decisions of the Federal Labor Relations Authority that may be purchased from the Superintendent of Documents:

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Federal Labor Relations Authority

News Release

500 C Street, SW.
Washington, D.C. 20424

PRESS RELEASE
July 6, 1984

The Federal Labor Relations Authority today announced the selection of Mr. S. Jesse Reuben to the position of Regional Director of the Washington Regional Office.

Mr. Reuben began his labor relations career with the National Labor Relations Board (NLRB) in May 1962. After holding a series of increasingly responsible positions with the NLRB, he left in April 1970 to join in developing the Federal sector program under Executive Order 11491 with the Labor-Management Services Administration of the Department of Labor (DOL). He later became Deputy Director of the Office of Federal Labor-Management Relations with DOL. As a result of the President's Reorganization Plan of 1978, he transferred to the Federal Labor Relations Authority (FLRA). Mr. Reuben became a charter member of the Senior Executive Service in July 1979. He has served the FLRA in the capacity of Associate General Counsel, Deputy General Counsel, and was appointed Acting General Counsel by President Reagan from June 1982 to March 1983.

Mr. Reuben earned his bachelor's degree and his law degree from George Washington University.

Federal Labor Relations Authority

Washington, D.C. 20424

INFORMATION ANNOUNCEMENT June 20, 1984

The following request for comments was published on page 25243 of the June 20, 1984 issue of the Federal Register (Vol. 49, No. 120):

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Ch. XIV

Processing of Cases

AGENCY: Federal Labor Relations Authority.

ACTION: Request for comments.

SUMMARY: In connection with its review of case processing procedures, the Federal Labor Relations Authority requests written proposals concerning possible modifications to its case processing procedures. All submissions will be reviewed and a determination made as to which matters will be further considered at one or more open meetings. The meetings will be announced and interested parties will be given an opportunity to appear and present their views. The results of this review of the Authority's case processing procedures could be, among other things, amendments to the Authority's rules and regulations.

DATE: Written comments must be received by the Authority on or before July 21, 1984.

ADDRESS: Comments should be submitted to Harold D. Kessler, Director, Office of Case Management, Federal Labor Relations Authority, 500 C Street, SW., Washington, D.C. 20424.

FOR FURTHER INFORMATION CONTACT: Harold D. Kessler, Director, Office of Case Management, Federal Labor Relations Authority, 500 C Street, SW., Washington, D.C. 20424, (202) 382–0711.

SUPPLEMENTARY INFORMATION: The Authority has been reviewing its case processing procedures. The Authority has received from the Department of Defense recommendations that the Authority modify certain of these procedures. In a recent letter to the Authority, the presidents of the American Federation of Government Employees, the National Association of Government Employees, the National Federation of Federal Employees and the National Treasury Employees Union also proposed revisions to certain of the Authority's case processing procedures and requested a meeting with the Authority. Upon review of these submissions, the Authority has decided to grant agencies, unions and interested individuals an opportunity to comment on the Authority's case processing procedures in an effort to identify modifications that would improve case processing.

The first step in the review process is this notice in which all interested parties are requested to submit written comments to the Authority no later than the comment date listed above. Thereafter, the Authority will review all submissions and make a determination as to which matters will be considered at open meetings. Then, agencies, unions and interested persons will be invited through a public announcement to request from the Authority an opportunity to address such matters at the open meeting called for their consideration. Fixed times will be granted to those wishing to participate in these open meetings. Finally, the Authority will take appropriate action which could include amendments to the Authority's rules and regulations or other appropriate action.

List of Subjects in 5 CFR Ch. XIV

Administrative practice and procedure, Government employees, Labor-management relations.

Dated: June 15, 1984.

Federal Labor Relations Authority.

Barbara J. Mahone,

Chairman.

Ronald W. Haughton,

Henry B. Frazier III,

Members.

[FR Doc. 84–16403 Filed 6–19–84; 8:45 am]

BILLING CODE 6720–01–M

Federal Service Impasses Panel

500 C Street, SW. Washington, D.C. 20424

Information Release January 19, 1984

BREWER NAMED CHAIRMAN OF PANEL

The President has announced his intention to appoint Roy M. Brewer to be Chairman and Member of the Federal Service Impasses Panel with a term expiring on January 10, 1989. Mr. Brewer has been a member of the Panel since September 1983, when he was appointed to fill the position previously held by Beverly K. Schaffer. He succeeds Robert G. Howlett as chairman.

The Panel, an entity within the Federal Labor Relations Authority, assists Federal agencies and labor organizations representing Federal employees in the resolution of negotiation impasses. Under the Civil Service Reform Act of 1978 the President appoints a chairman and at least six other members from among individuals who are familiar with Government operations and knowledgeable in labor-management relations. They serve on a part-time basis and have 5-year terms.

Mr. Brewer has been active in the labor movement for over 50 years. Since 1978, he has been a consultant to Local 695, Sound Technicians, Cinetechnicians, and Television Engineers, AFL-CIO, in Hollywood, California, and inasmuch as the demands of the Panel will not interfere with his responsibilities as consultant, he will continue in that position. From 1972 to 1978, he served as international representative of the International

Alliance of Theatrical Stage Employees, AFL-CIO. Mr. Brewer was director of industrial relations for Technicolor, Inc. (1967 to 1970) and special assistant to the president and later, vice president of Allied Artists Pictures Corporation in New York (1953 to 1967). In 1943, he was appointed to the staff of the Office of Labor Production of the War Production Board and became chief of the Division of Plant and Communities Facilities Service. Mr. Brewer also served on the War Labor Board during the Korean war. Earlier, he had served 8 years as president of the Nebraska State Federation of Labor.

Mr. Brewer, who is married and has two children, resides in Tarzana, California.

For further information,
telephone (202) 382-0981.

☆ U.S. GOVERNMENT PRINTING OFFICE: 1984-421-896:417

Federal Service Impasses Panel

500 C Street, SW. Washington, D.C. 20424

Information Release February 17, 1984

HOWLETT AND ROBFOGEL REAPPOINTED TO PANEL

Robert G. Howlett and Susan S. Robfogel were sworn in today in Washington, D.C., as members of the Federal Service Impasses Panel. Their previous terms having expired on January 10, 1984, President Reagan reappointed them for 5-year terms.

The Panel, an entity within the Federal Labor Relations Authority, assists Federal agencies and unions composed of Federal employees in resolving negotiation impasses.

Mr. Howlett, a prominent labor arbitrator, served as Chairman of the Panel from 1976-1978 and 1982-1983 and was a member and Chairman of the Michigan Employment Relations Commission from 1963-1976. He also served with the National War Labor Board. Mr. Howlett is counsel to the law firm of Varnuum, Riddering, Schmidt, and Howlett in Grand Rapids, Michigan. He is also a member of the National Academy of Arbitrators, a director of the American Arbitration Association, and a member of the Michigan, District of Columbia, and other State Bars. A past president of the Association of Labor Relations Agencies and the Society of Professionals in Dispute Resolution, Mr. Howlett is currently a member of these organizations as well as the Industrial Relations Research Association.

From 1981-1982, Mr. Howlett served as Chairman and public member of the Foreign Service Impasse Disputes Panel, the five-member panel which resolves negotiation impasses pursuant to the Foreign Service Act of 1980. He currently serves as a member of that body.

Mr. Howlett's publications on the subject of collective bargaining are numerous. He was born in Michigan where he has resided for most of his life, and received both his B.S. and J.D. degrees from Northwestern University.

Mrs. Robfogel is a partner in the Rochester, New York, based law firm of Harris, Beach, Wilcox, Rubin and Levey, specializing in labor relations law and health law. From 1967 to 1970 she served as Senior Assistant Corporation Counsel to the City of Rochester, New York. She has had extensive experience in proceedings before the National Labor Relations Board, the New York Public Employment Relations Board, and the Equal Employment Opportunity Commission.

A member of the Monroe County, New York State, District of Columbia, and American Bar Associations, she serves on the American Bar Association's Committee on Development of Law Under the National Labor Relations Act and is chairman of the New York State Bar Association's Health Law Committee. Mrs. Robfogel has also been an instructor and lecturer for the New York State School of Industrial and Labor Relations at Cornell University. She is a trustee of Rochester Community Savings Bank, a member of the Board of Directors of the Rochester Area Chamber of Commerce, and a member of the Executive Committee of the United Way of Greater Rochester.

A cum laude graduate of Smith College, Mrs. Robfogel also received a J.D. degree from Cornell University Law School in 1967. She resides in Rochester, New York, with her husband, Nathan, and two sons, Jacob and Samuel, age 12 and 11, respectively.

Other members of the Federal Service Impasses Panel are Chairman Roy M. Brewer of Tarzana, California; Jean T. McKelvey of Rochester, New York; N. Victor Goodman of Columbus, Ohio; Daniel H. Kruger of Lansing, Michigan; and Thomas A. Farr of Raleigh, North Carolina.

☆ U.S. GOVERNMENT PRINTING OFFICE: 1984-421-896:419

For further information,

telephone (202) 382-0981.

Federal Service Impasses Panel

Information Release March 30, 1982

RODGERS APPOINTED TO PANEL

The President has appointed Donald F. Rodgers to be a member of the Federal Service Impasses Panel. He fills a position left vacant by the resignation of Irving Bernstein with a term expiring on January 10, 1985.

Rodgers' extensive labor-relations experience dates back to 1953 when he became a Business Representative for the International Union of Operating Engineers, AFL-CIO, a position he held until 1969. For 15 years he organized and represented public employees. He was Executive Director, New York Building and Construction Board of Urban Affairs, from 1969 to 1972, and served as Special Consultant to the President for Labor and Counsellor to the Secretary of Labor from 1972 to 1974. Since 1974, until recently, Rodgers was Director, Energy and Governmental Relations, for the International Brotherhood of Teamsters. He is now a private consultant in the fields of government, energy, and labor.

As a participant in numerous conferences concerning labor, energy, and international affairs, Rodgers has spoken on such topics as United States competitiveness in international trade; productivity research; politics of world economy; and government operations, political activity and energy. He is also a member of various Department of Labor international trade policy committees.

Rodgers is a graduate of Cornell University having received his B.S. in Industrial and Labor Relations in 1952. He currently resides in Rockville, Maryland, is married, and has five children.

For further information,
telephone (202) 382-0981.

Federal Service Impasses Panel

1730 K Street, NW. **Washington, D.C. 20006**

Information Release February 10, 1982

HOWLETT NAMED CHAIRMAN OF PANEL

Robert G. Howlett has been designated Member and Chairman of the Federal Service Impasses Panel, the White House announced today. Howlett succeeds Howard G. Gamser whose resignation as Member and Chairman of the Panel was accepted by the President, effective February 16, 1982.

The Panel, an entity within the Federal Labor Relations Authority, assists Federal agencies and labor organizations in the resolution of negotiation impasses. Under the Civil Service Reform Act of 1978 the President appoints a chairman and at least six other members from among individuals who are familiar with Government operations and knowledgeable in labor-management relations. They have 5-year terms.

A prominent labor arbitrator, Howlett served as Chairman of the Panel from 1976-1978 and was a member and chairman of the Michigan Employment Relations Commission from 1963-1976. He also served with the National War Labor Board. Howlett is a partner in the law firm of Schmidt, Howlett, Van't Hof, Snell and Vana in Grand Rapids, Michigan. He is also a member of the National

Academy of Arbitrators, a director of the American Arbitration Association, and a member of the Michigan, District of Columbia, and other State Bars. A past president of the Association of Labor Relations Agencies and the Society of Professionals in Dispute Resolution, Howlett is currently a member of these organizations as well as the Industrial Relations Research Association. In April 1981, Howlett was selected as the public member and designated Chairman of the Foreign Service Impasse Disputes Panel, the five-member panel which resolves negotiation impasses pursuant to the Foreign Service Act of 1980.

His publications on the subject of collective bargaining are numerous. He was born in Michigan where he has resided for most of his life, and received both his B.S. and J.D. degrees from Northwestern University.

Other members of the Federal Service Impasses Panel are Professors Jean T. McKelvey of Cornell University in Ithaca, New York; Charles J. Morris of Southern Methodist University in Dallas, Texas; and Beverly K. Schaffer of Emory University in Atlanta, Georgia. Three positions on the Panel remain unfilled.

For further information,
telephone (202) 382-0981.

Federal Service Impasses Panel

1730 K Street, NW. Washington, D.C. 20006

Information Release February 5, 1982

NOTICE

The Panel will soon move its offices to a new location. Effective February 15, 1982, its address and telephone number will be:

500 C Street, SW.
Washington, D.C. 20424
(202) 382-0981

All correspondence with the Panel should be directed to the Executive Director of the Panel at the above address.

Federal Labor Relations Authority

News Release

500 C Street. S.W.
Washington, D.C. 20424

IMMEDIATE RELEASE January 27, 1982

Leon B. Applewhaite, Member of the Federal Labor Relations Authority has announced the appointment of Marni E. Byrum, of Alexandria, Virginia, as his Executive Assistant. Byrum joins Applewhaite's staff as a former attorney-advisor in the Office of the Chief Counsel of the Authority. She will handle a wide variety of special assignments in addition to providing policy and legal advice and will report directly to Applewhaite.

Byrum is a member of the Virginia State Bar as well as the American Bar Association; including the Labor Law Section. She serves on the ABA Committee on Federal Sector Labor Relations. With a B.A. in political science from Virginia Polytechnic Institute and State University, Byrum earned her J.D. from Pepperdine University School of Law. As a student she authored the (1978) Pepperdine Law Review article "Trespassory Union Picketing on Private Property: Sears, Roebuck and Co. v. San Diego County District Council of Carpenters -- Bring State Law to 'No-Man's Land'?"

Byrum is active in Phi Alpha Delta Law Fraternity International, currently holding a position of Justice of District XVII which includes the Washington, D.C. and Maryland areas.

Federal Labor Relations Authority

Washington, D.C. 20424

INFORMATION ANNOUNCEMENT January 15,1982

The Federal Labor Relations Authority has announced the closing of the Kansas City, Missouri Regional Office (Region 7) effective on January 25,1982, and the relocation of the Authority's headquarters for Region 7 at the Denver, Colorado Office (formerly a Sub-Regional Office within Region 7).

Based upon a careful review of overhead costs, travel costs and the need for effective supervision of field personnel, it was concluded that it would be in the best interests of optimizing the transaction of Authority business through the most effective and efficient manner by moving the Regional Office headquarters to Denver, Colorado and closing the Kansas City, Missouri Office. The Authority's action is part of a reassessment of its field structure based on case-handling experience under the Statute.

The Authority's Denver Regional Office's address and telephone number are:

Suite 301
1531 Stout Street
Denver, Colorado 80202
(303) 837-5224
FTS 327-5224

Federal Labor Relations Authority

Washington, D.C. 20424

INFORMATION ANNOUNCEMENT January 13, 1982

The following Presidential Document was published on page 1369 of the Federal Register on Wednesday, January 13, 1982 (Vol. 47, No. 8):

Executive Order 12338 of January 11, 1982

Exclusions From the Federal Labor-Management Relations Program

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 7103(b) of Title 5 of the United States Code, and in order to exempt certain agencies or subdivisions thereof from coverage of the Federal Labor-Management Relations Program, and in order to reflect organizational changes in the Department of Energy, it is hereby ordered as follows:

Section 1. Section 1–206 of Executive Order No. 12171 of November 19, 1979, is amended by adding thereto the following new subsections:

"(p) Office of the Assistant Chief of Staff, Intelligence.

"(q) Air Force Intelligence Service.".

Sec. 2. Executive Order No. 12171 is further amended by adding thereto the following new Section:

"1–212. Agencies or subdivisions under the operational jurisdiction of the Joint Chiefs of Staff (JCS).

"(a) Intelligence Division (J–2), Headquarters Atlantic Command (LANTCOM).

"(b) Atlantic Command Electronic Intelligence Center.

"(c) Intelligence Directorate (J–2), Headquarters U.S. European Command (USEUCOM).

"(d) Special Security Office (SSO), Headquarters U.S. European Command (USEUCOM).

"(e) European Defense Analysis Center (EUDAC).

"(f) Intelligence Directorate (J–2), Headquarters Pacific Command (PACOM).

"(g) Intelligence Center Pacific (IPAC).

"(h) Intelligence Directorate (J–2), Headquarters U.S. Southern Command (USSOUTHCOM).

"(i) Intelligence Directorate (J–2), Headquarters U.S. Readiness Command (USREDCOM)/Joint Deployment Agency.

"(j) Deputy Chief of Staff/Intelligence, Headquarters Strategic Air Command (SAC).

"(k) 544th Strategic Intelligence Wing, Strategic Air Command (SAC).

"(l) Deputy Chief of Staff/Intelligence, Headquarters 15th Air Force, Strategic Air Command (SAC).

"(m) Deputy Chief of Staff/Intelligence, Headquarters 8th Air Force, Strategic Air Command (SAC).

"(n) Strategic Reconnaissance Center, Headquarters Strategic Air Command (SAC).

"(o) 6th Strategic Wing, Strategic Air Command (SAC).

"(p) 9th Strategic Reconnaissance Wing, Strategic Air Command (SAC).

"(q) 55th Strategic Reconnaissance Wing, Strategic Air Command (SAC).

"(r) 306th Strategic Wing, Strategic Air Command (SAC).

"(s) 376th Strategic Wing, Strategic Air Command (SAC).

"(t) Deputy Chief of Staff/Operations Plans, Headquarters Strategic Air Command (SAC).

"(u) The Joint Strategic Target Planning Staff (JSTPS).".

Sec. 3. Section 1–210 of Executive Order No. 12171 is amended to read as follows:

"1–210. Agencies or subdivisions of the Department of Energy.

"(a) The Albuquerque, Nevada and Savannah River operations offices under the Under Secretary of Energy.

"(b) Offices of the Assistant Secretary for Defense Programs.".

Ronald Reagan

THE WHITE HOUSE,
January 11, 1982.

Federal Labor Relations Authority

Washington, D.C. 20424

INFORMATION ANNOUNCEMENT November 23, 1981

The following amendment to Appendix A of the Authority's rules and regulations was published on page 57263 of the Federal Register on Monday, November 23, 1981 (Vol. 46, No. 225):

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Ch. XIV

Relocation of Headquarters Offices

AGENCY: Federal Labor Relations Authority and General Counsel of the Federal Labor Relations Authority.

ACTION: Amendment of rules and regulations.

SUMMARY: The Federal Labor Relations Authority and the General Counsel of the Authority have relocated their headquarters offices. This amendment to Appendix A of the rules and regulations of the Authority and the General Counsel sets forth the new addresses and certain phone numbers for the offices.

EFFECTIVE DATE: October 26, 1981.

FOR FURTHER INFORMATION CONTACT: Jerome P. Hardiman, Director, Office of Operations and Technical Assistance, (202) 382-0748; or S. Jesse Reuben, Deputy General Counsel, (202) 382-0742.

SUPPLEMENTARY INFORMATION: Paragraphs (a), (b) and (c) of Appendix A to 5 CFR Chapter XIV set forth the addresses and phone numbers of the offices of the Authority, the General Counsel, and the Chief Administrative Law Judge of the Authority, respectively. Because of the relocation of those offices it is necessary to revise the provisions to read as follows.

CHAPTER XIV—FEDERAL LABOR RELATIONS AUTHORITY

Paragraphs (a), (b) and (c) of Appendix A to 5 CFR Chapter XIV are revised as follows:

Appendix A to 5 CFR Ch. XIV—Current Addresses and Geographic Jurisdictions

(a) The Office address of the Authority is: 500 C Street, SW., Washington, D.C. 20424; telephone: FTS 382-0777, or Commercial (202) 382-0777.

(b) The Office address of the General Counsel is: 500 C Street, SW., Washington, D.C. 20424; telephone: FTS 382-0742; or Commercial (202) 382-0742.

(c) The Office address of the Chief Administrator is: 500 C Street, SW.. Washington, D.C. 20424; telephone: FTS 382-0851; or Commercial (202) 382-0851.

(45 FR 80467, Dec. 5, 1980)

Dated: November 13, 1981.

Ronald W. Haughton,
Chairman;

Henry B. Frazier III,
Member;

Leon B. Applewhaite,
Member;

H. Stephen Gordon,
General Counsel, Federal Labor Relations Authority.

[FR Doc. 81-33528 Filed 11-20-81; 8:45 am]

BILLING CODE 6727-01-M

Federal Labor Relations Authority

Washington, D.C. 20424

INFORMATION ANNOUNCEMENT November 20, 1981

The following proposed revision of the Authority's rules and regulations was published on page 57056 of the Federal Register on Friday, November 20, 1981 (Vol. 46, No. 224):

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2429

Processing of Cases; Proposed Revision of Rules

AGENCY: Federal Labor Relations Authority.

ACTION: Proposed revision of rules and regulations.

SUMMARY: This proposed revision would provide that the timely filing of an exception to an arbitration award with the Authority will automatically serve to stay that award until the Authority resolves the exception. The proposed revision would more accurately reflect the provisions and intent of the Federal Service Labor-Management Relations Statute.

DATE: Written comments will be considered if received by December 21, 1981.

ADDRESS: Send written comments to James J. Shepard, Executive Director, Federal Labor Relations Authority, 500 C Street, SW., Washington, D.C. 20424.

FOR FURTHER INFORMATION CONTACT: Paul E. Klein, Chief Counsel, (202) 382-0881.

SUPPLEMENTARY INFORMATION: Under § 2429.8 of the Authority's final rules and regulations, the Authority will entertain a request for a stay of an arbitration award only in conjunction with and as part of an exception to an arbitrator's award filed under part 2425 of the rules and regulations. The proposed revision would more accurately reflect the provisions and intent of section 7122(b) of the Federal Service Labor-Management Relations Statute (5 U.S.C. 7122(b)). That section provides that if an exception to an award is not filed with the Authority during the 30 day period beginning on the date of the award, then the award becomes final and binding and whatever action is required by the final award must be taken. Therefore, the Statute implicitly provides for a stay of the award when exceptions have been timely filed with the Authority and the proposed revision reflects that provision. Likewise, the change facilitates the administration of the Statute, since it would avoid questions concerning compliance with an award which may be subsequently set aside or modified as a result of the exceptions filed.

PART 2429—MISCELLANEOUS AND GENERAL REQUIREMENTS

It is proposed to amend 5 CFR Part 2429 by revising § 2429.8 to read as follows:

§ 2429.8 Stay of arbitration award.

The filing of an exception arbitrator's award under Part 2425 of this subchapter shall operate as a stay of the award. Such stay shall be deemed effective from the date of the award and shall remain in effect until the Authority resolves the exception.

(5 U.S.C. 7134)

Dated: November 13, 1981.

Federal Labor Relations Authority.

Ronald W. Haughton,

Chairman.

Henry B. Frazier III,

Member.

Leon B. Applewhaite,

Member.

[FR Doc. 81-33521 Filed 11-19-81; 8:45 am]

BILLING CODE 6727-01-M

Federal Labor Relations Authority

News Release

1900 E Street, NW.
Washington, D.C. 20424

INFORMATION ANNOUNCEMENT October 22, 1981

The Federal Labor Relations Authority today issued its decision and order in the unfair labor practice proceeding against the Professional Air Traffic Controllers Organization (PATCO).

The Authority unanimously upheld its Chief Administrative Law Judge's finding that PATCO called, participated in and condoned a strike and, by a 2-to-1 majority, ordered that the organization's exclusive recognition status be revoked. The Authority took this action pursuant to the Federal Service Labor-Management Relations Statute, which was enacted in the Civil Service Reform Act and effective in January 1979.

The Authority's order revokes PATCO's status as exclusive bargaining agent for some 18,000 air traffic controllers who have been employed by the Federal Aviation Administration in airport towers, traffic centers and combined stations and towers. Under the Statute, the organization "immediately cease/ s/ to be legally entitled and obligated to represent employees" in the nation-wide unit it has represented since October 1972.

The nation-wide walkout of air traffic controllers began at the start of the day shift on August 3, 1981. Based on an unfair labor practice charge filed by FAA, and following an investigation by the FLRA Regional Office here in Washington, the General Counsel of FLRA issued a complaint against PATCO that same morning (August 3). The Chief Administrative Law Judge held the hearing on the complaint on August 10-11, and on August 14 issued his findings of fact, conclusions of law and recommended order to revoke PATCO's exclusive recognition status. The Authority Members entertained oral arguments in the case on September 16. The Authority had the benefit of these oral arguments, as well as the record developed by the Chief Administrative Law Judge and the extensive briefs that were submitted in the case, for consideration in arriving at today's decision and order.

The three Members of the Authority were unanimous in holding that PATCO committed an unfair labor practice under the Statute--i.e., that the organization violated the no-strike provision in 5 U.S.C. 7116(b)(7) by calling, participating in and condoning a strike. The majority, consisting of Member Henry B. Frazier III and Member Leon B. Applewhaite, concluded that PATCO willfully and intentionally called, participated in and condoned the strike and that the organization's exclusive recognition status should be revoked pursuant to 5 U.S.C. 7120(f).

The Authority also concluded unanimously that, as of this date, PATCO is not a "labor organization" under the Statute and that it is "wholly unnecessary to address the question of whether, at some unspecified time in the future, PATCO or some successor organization may meet the definition of a labor organization and thereby acquire the rights and obligations of a labor organization under the Statute."

In his opinion in the case, Member Frazier concluded that the Statute plainly requires revocation of PATCO's status as the exclusively recognized representative of the nation-wide bargaining unit in FAA. In so concluding, he found that while the language and legislative history of the Statute provide the Authority with some degree of discretion to fashion an appropriate order to remedy a violation of section 7116(b)(7), this discretion, in the circumstances of this case, cannot be exercised under the Statute to sanction any lesser penalty than revocation of PATCO's exclusive recognition. Frazier pointed out that Congress has established that collective bargaining in the Federal sector must exist within a framework of an effective and efficient government, the operations of which may not be disrupted by strikes or other work stoppages, and such is the rule of law which is binding on the Authority. All Federal employees and labor organizations, Frazier noted, must adhere to this rule of law established by duly constituted authority, for a free society cannot be maintained if individuals or associations within that society may choose to obey only those laws with which they agree.

Member Applewhaite also concluded that revocation is the appropriate remedy. He and Chairman Haughton differed with Member Frazier's conclusion that the nature of the discretion regarding remedy accorded the Authority by section 7120(f) is extremely limited, with the only circumstances which the Authority may take into account in assessing a lesser remedy than revocation for a willful and intentional violation of section 7116(b)(7) being those instances in which the union made efforts to prevent or stop the illegal strike activity. They also noted that the clear language of the Statute, as well as relevant legislative history, provides that the Authority has the obligation to revoke PATCO's exclusive recognition status or "take any other appropriate disciplinary action". That is, revocation is required unless the circumstances warrant any other disciplinary action. Congress left it up to the Authority to determine what those circumstances might be.

Additionally, Member Applewhaite expressed his concern that the statutory and any contractual rights of current employees of FAA not be negated "as a result of the unfortunate and unprecedented situation presented by this case." Accordingly, he stated his preference for the Authority also to have appointed an impartial committee of labor relations experts to make recommendations to the Authority regarding any such problems which may exist.

Chairman Haughton found that the present record was insufficient to determine whether revocation or other action is warranted in this case. He concluded that the case should be remanded to the Chief Administrative Law Judge for further evidence as to remedy. He said he would remand only if PATCO, within 5 days, ends the strike and represents to the Authority that it intends to abide by the no-strike provisions of the Statute. If PATCO fails to do so, Chairman Haughton will concur in the majority's order to revoke.

While the Authority's order may be appealed to the U.S. Court of Appeals and, ultimately, to the Supreme Court, the Statute expressly provides that the filing of an appeal "shall not operate as a stay of the Authority's order unless the court specifically orders the stay".

The Federal Labor Relations Authority is an independent agency in the Executive Branch and administers the Federal Service Labor-Management Relations Statute. It is responsible for adjudicating representation and unfair labor practice cases, negotiability disputes and appeals from arbitration awards. The Authority also provides leadership in establishing labor relations policies under the Statute.

Chairman Haughton is a former arbitrator who also served for over 20 years as Co-Director of the Institute of Labor and Industrial Relations of the University of Michigan and Wayne State University. Member Frazier is an attorney who served as Executive Director of the Federal Labor Relations Council (the predecessor agency of the FLRA) and has held other positions in the Government. Member Applewhaite is an attorney, an arbitrator and was a professor of labor relations at Cornell University. He also served, for over 10 years, as Chief Regional Mediator for the New York State Public Employment Relations Board.

The full text of the Authority's decision and order, including the opinions of each Member, is attached.

FEDERAL LABOR RELATIONS AUTHORITY • WASHINGTON, D.C. 20424

INFORMATION ANNOUNCEMENT October 2, 1981

The following interim rules and regulations were published in the Federal Register:

Federal Register / Vol. 46, No. 191 / Friday, October 2, 1981 / Rules and Regulations 48623

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2430

General Counsel of the Federal Labor Relations Authority; Equal Access to Justice Act; Implementation

AGENCY: Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority.

ACTION: Interim rules and regulations; request for comments.

SUMMARY: These interim rules and regulations are required by and designed to implement the Equal Access to Justice Act. 5 U.S.C. 504. As applied to the Federal Labor Relations Authority, the Act, which takes effect October 1, 1981, authorizes the award of fees and other expenses to eligible parties who prevail in defending against the General Counsel of the authority in adversary adjudications conducted by the Authority. An eligible prevailing party in such a situation would, upon application, be entitled to an award of allowable fees and expenses incurred in connection with the adversary adjudication, unless an adjudicative officer finds that the position of the General Counsel as a party to the proceeding was substantially justified or that special circumstances make an award unjust. These interim rules and regulations describe the eligibility criteria for a party to apply for an award of fees and other expenses in adversary proceedings of the Authority; identify the Authority proceedings covered by the Act; and set forth the procedures for the submission and consideration of an application for an award. The interim rules and regulations will expire no later than March 15, 1982.

DATES: Effective Date: October 1, 1981. Comment date: Written comments received by November 15, 1981, will be considered in promulgation of final rules and regulations on this subject.

ADDRESS: Comments should be mailed to James F. Shepard, Executive Director, Federal Labor Relations Authority, Washington, D.C. 20424.

FOR FURTHER INFORMATION CONTACT: Jerome P. Hardiman, Director, Office of Operations and Technical Assistance, Federal Labor Relations Authority, Washington, D.C. 20424, (202) 254–7362.

SUPPLEMENTARY INFORMATION: The Equal Access to Justice Act. 5 U.S.C. 504, effective October 1, 9181, provides that an agency which conducts an adversary adjudication shall award to an eligible party (other than the United States) that prevails against the agency in defending against or seeking review of the agency's action certain fees and other expenses incurred by that party in connection with the proceeding, unless the adjudicative officer of the agency finds that the position of the agency as a party to the proceeding was substantially justified or that special circumstances make an award unjust.

An adversary adjudication is an adjudication under section 554 of the Administrative Procedure Act. 5 U.S.C. 554, in which the position of the United States is represented by counsel or otherwise. The adversary adjudications of the Federal Labor Relations Authority that are covered by the Act are unfair labor practice proceedings pending on complaint against a labor organization at any time between October 1, 1981, and September 30, 1984. This includes proceedings begun before October 1, 1981, if final Authority action has not been taken before that date, and proceedings pending on September 30, 1984, regardless of when they were initiated or when final Authority action occurs.

Applicants eligible to receive an award in connection with such an unfair labor practice proceeding conducted by the Authority are identified with specificity in the interim regulations at § 2430.2(b).

Fees and other expenses that may be awarded include the reasonable expenses of expert witnesses, the reasonable cost of any study; analysis, engineering report, test, or project which is found by the agency to be necessary for the preparation of the party's case, and reasonable attorney or agent fees.

Under the Act, an adjudicative officer is the deciding official who presided at the adversary proceeding upon which the application for an award of fees and other expenses is based. As applied to the Federal Labor Relations Authority, the adjudicative officer is the Administrative Law Judge who presided at the hearing on the unfair labor practice complaint against the labor organization involved. These interim regulations provide at § 2430.7 that in the event the Administrative Law Judge who presided at the proceeding is unavailable, or the proceeding was not heard by an Administrative Law Judge, an application for an award will be referred to the Chief Administrative Law Judge for designation of a Judge for consideration and decision on the application. The regulations also provide at § 2430.13 for the filing of exceptions to an Administrative Law Judge's decision with the Authority and a final decision on the matter by the Authority.

As already indicated, the Equal Access to Justice Act requires each agency to establish uniform procedures for the submission and consideration of applications for an award of fees and other expenses. These interim rules and regulations, designed to implement the provisions of the Act, follow the model rules recommended by the Administrative Conference of the United States (46 FR 32900, June 25, 1981) which we understand have been submitted to the Office of Management and Budget in order to facilitate any review that may be warranted under the Paperwork Reduction Act.

In accordance with section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Authority and the General Counsel of the Authority have determined that these interim rules and regulations will not have a significant economic impact upon a substantial number of small entities and, therefore, preparation of a regulatory flexibility analysis is not required.

Accordingly, Chapter XIV of Title 5 of the Code of Federal Regulations is revised to add a new Part 2430 to read as follows:

PART 2430—AWARDS OF ATTORNEY FEES AND OTHER EXPENSES

Sec.

Authority: Sec. 203(a)(1), Pub. L. 96–481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)).

§ 2430.1 Purpose.

The Equal Access to Justice Act, 5 U.S.C. 504, provides for the award of attorney, agent, or witness fees and other expenses to eligible individuals and entities who are parties to agency

adversary adjudications. An eligible party may receive an award when it prevails over an agency, unless the agency's position in the proceeding was substantially justified, or special circumstances make an award unjust. The rules in this part describe the parties eligible for awards, and the Authority proceeding that is covered. They also set forth the procedures for applying for such awards, and the procedures by which the Authority will rule on such applications.

§ 2430.2 Proceedings affected; eligibility for award.

(a) The provisions of this part apply to unfair labor practice proceedings pending on complaint against a labor organization at any time between October 1, 1981, and September 30, 1984. They apply to proceedings begun before October 1, 1981, if final Authority action has not been taken before that date, and proceedings pending on September 30, 1984, regardless of when they were initiated or when final Authority action occurs.

(b) A respondent in an unfair labor proceeding which has prevailed in the proceeding, or in a significant and discrete portion of the proceeding, and who otherwise meets the eligibility requirements of this section, is eligible to apply for an award of attorneys fees and other expenses allowable under the provisions of § 2430.4 of these rules.

(1) Applicants eligible to receive an award in proceedings conducted by the Authority are any partnership, corporation, association, or public or private organization with a net worth of not more than $5 million and not more than five hundred (500) employees.

(2) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the complaint was issued.

(3) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(4) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§ 2430.3 Standards for awards.

(a) An eligible applicant may receive an award for fees and expenses incurred in connection with a proceeding, or in a significant and discrete portion of the proceeding, unless the position of the General Counsel over which the applicant has prevailed was substantially justified. The burden of proof that an award should not be made to an eligible applicant is on the General Counsel, who may avoid an award by showing that its position in initiating the proceeding was reasonable in law and fact.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

§ 2430.4 Allowable fees and expenses.

(a) No award for the fee of an attorney or agent under these rules may exceed $75.00 per hour. No award to compensate an expert witness may exceed the highest rate which the Authority pays expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent or witness ordinarily charges clients separately for such expenses.

(b) In determining the reasonableness of the fee sought for an attorney, agent or expert witness, the following matters may be considered:

(1) If the attorney, agent or witness is in practice, his or her customary fee for similar services, or, if an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(c) The reasonable cost of any study, analysis, engineering report, test, project or similar matters prepared on behalf of an applicant may be awarded, to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the applicant's case.

§ 2430.5 Rulemaking on maximum rates for attorney fees.

Any person may file with the Authority a petition under § 2429.28 of these rules for rulemaking to increase the maximum rate for attorney fees. The petition should specify the rate the petitioner believes should be established and explain fully the reasons why the higher rate is warranted.

§ 2430.6 Contents of application; net worth exhibit; documentation of fees and expenses.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. The application shall state the particulars in which the applicant has prevailed and identify the positions of the General Counsel in the proceeding that the applicant alleges were not substantially justified. The application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall include a statement that the applicant's net worth does not exceed $5 million.

(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application may also include any other matters that the applicant wishes the Authority to consider in determining whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true.

(f) Each applicant must provide with its application a detailed exhibit showing the net worth of the applicant when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The Administrative Law Judge may require an applicant to file additional information to determine its eligibility for an award.

(g) The application shall be accompanied by full documentation of the fees and expenses for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The Administrative Law Judge may require the applicant to provide vouchers, receipts, or other

substantiation for any expenses claimed.

§ 2430.7 When an application may be filed; referral to Administrative Law Judge; stay of proceeding.

(a) An application may be filed after entry of the final order establishing that the applicant has prevailed in the proceeding, or in a significant and discrete substantive portion of the proceeding, but in no case later than thirty (30) days after the entry of the Authority's final order in the proceeding. The application for an award shall be filed with the Authority in Washington, D.C., in an original and four copies, and served on all parties to the unfair labor practice proceeding. Service of the application shall be in the same manner as prescribed in §§ 2429.22 and 2429.27. Upon filing, the application shall be referred by the Authority to the Administrative Law Judge who heard the proceeding upon which the application is based, or, in the event the proceeding had not previously been heard by an Administrative Law Judge, it shall be referred to the Chief Administrative Law Judge for designation of an Administrative Law Judge, to consider the application. When the Administrative Law Judge to whom the application has been referred is or becomes unavailable, the provisions of § 2423.20 shall be applicable.

(b) Proceedings for the award of fees and other expenses, but not the time limit of this section for filing an application for an award, shall be stayed pending final disposition of the case, in the event any persons seeks Authority reconsideration or court review of the Authority decision that forms the basis for the application for fees and expenses.

§ 2430.8 Filing and service of documents.

All pleadings or documents after the time the case is referred by the Authority to an Administative Law Judge, until the issuance of the Judge's decision, shall be filed in an original and four copies with the Administrative Law Judge and served on all parties to the proceeding. Service of such documents shall be in the same manner as prescribed in §§ 2429.22 and 2429.27.

§ 2430.9 Answer to application; reply to answer; comments by other parties; extensions of time to file documents.

(a) Within 30 days after service of an application, the General Counsel may file an answer to the application. The filing of a motion to dismiss the application shall stay the time for filing an answer to a date thirty (30) days after issuance of any order denying the motion.

(b) If the General Counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate toward a settlement. The filing of such a statement shall extend the time for filing an answer for an additional 30 days.

(c) The answer shall explain in detail any objections to the award requested, and identify the facts relied on in support of the General Counsel's position. If the answer is based on alleged facts not already in the record of the proceeding, supporting affidavits shall be provided or a request made for further proceedings under § 2430.11.

(d) Within fifteen (15) days after service of an answer, the applicant may file a reply. If the reply is based on alleged facts not already in the record of the proceeding, supporting affidavits shall be provided or a request made for further proceedings under § 2430.11.

(e) Any party to a proceeding other than the applicant and the General Counsel may file comments on an application within 30 days after it is served, or on an answer within 15 days after it is served. A commenting party may not participate further in the proceeding on the application unless the Administrative Law Judge determines that such participation is required in order to permit full exploration of matters raised in the comments.

(f) Motions for extensions of time to file documents permitted by this section or § 2430.11 shall be filed with the Administrative Law Judge not less than five (5) days before the due date of the document.

§ 2430.10 Settlement.

The applicant and the General Counsel may agree on a proposed settlement of the award before final action on the application. If an applicant and the General Counsel agree on a proposed settlement of an award before an application has been filed, the proposed settlement shall be filed with the application. All such settlements shall be subject to approval by the Authority.

§ 2430.11 Further proceedings.

(a) The determination of an award may be made on the basis of the documents in the record, or the Administrative Law Judge, upon request of either the applicant or the General Counsel, or on his or her own initiative, may order further proceedings. Such further proceedings may include, but shall not be limited to, an informal conference, oral argument, additional written submissions, or an evidentiary hearing.

(b) A request that the Administrative Law Judge order further proceedings under this section shall specifically identify the disputed issues and the evidence sought to be adduced, and shall explain why the additional proceedings are necessary to resolve the issues.

(c) An order of the Administrative Law Judge scheduling oral argument, additional written submissions, or an evidentiary hearing, shall specify the issues to be considered in such argument, submission, or hearing.

(d) Any evidentiary hearing held pursuant to this section shall be conducted not earlier than forty-five (45) days after the date on which the application is served. In all other respects, such hearing shall be conducted in accordance with §§ 2423.14, 2423.16, 2423.17, 2423.19 through 2423.21, 2423.23, and 2423.24, insofar as these sections are consistent with the provisions of this part.

§ 2430.12 Administrative Law Judge's decision; contents; service; transfer of case to the Authority; contents of record in case.

(a) Upon conclusion of proceedings under §§ 2430.6 to 2430.11, the Administrative Law Judge shall prepare a decision. The decision shall include written findings and conclusions on the applicant's status as a prevailing party and eligibility, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the agency's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. The Administrative Law Judge shall cause the decision to be served promptly on all parties to the proceeding. Thereafter, the Administrative Law Judge shall transmit the case to the Authority, including the judge's decision and the record. Service of the Administrative Law Judge's decision and of the order transferring the case to the Board shall be complete upon mailing.

(b) The record in a proceeding on an application for an award of fees and expenses shall consist of the application for an award of fees and expenses and any amendments or attachments thereto, the net worth exhibit, the answer and any amendments or attachments thereto, any reply to the answer, any comments by other parties, motions, rulings, orders, stipulations, written submissions, the stenographic transcript of oral argument, the stenographic transcript of the hearing,

exhibits and depositions, together with the Administrative Law Judge's decision, and the exceptions and briefs as provided in § 2430.13, and the record of the unfair labor practice proceeding upon which the application is based.

§ 2430.13 Exceptions to administrative law judge's decision; briefs; action of Authority.

Procedures before the Authority, including the filing of exceptions to the administrative law judge's decision rendered pursuant to § 2430.12, and action by the Authority, shall be in accordance with §§ 2423.26(c), 2423.27, and 2423.28 of these rules. The Authority's review of the matter shall be in accordance with § 2423.29(a).

§ 2430.14 Payment of award.

To obtain payment of an award made by the Authority the applicant shall submit to the Executive Director of the Authority a copy of the Authority's final decision granting the award, accompanied by a statement that the applicant will not seek court review of the decision. The amount awarded will then be paid unless judicial review of the award, or of the underlying decision, has been sought by the applicant or any other party to the proceeding.

Dated: September 30, 1981.

Ronald W. Haughton,
Chairman.

Henry B. Frazier III,
Member.

Leon B. Applewhaite,
Member.

H. Stephan Gordon,
General Counsel.

[FR Doc. 81-28678 Filed 10-1-81; 8:45 am]
BILLING CODE 6727-01-M

Federal Labor Relations Authority

1900 E Street, NW.
Washington, D.C. 20424

INFORMATION ANNOUCEMENT August 11, 1981

THE FOLLOWING AMENDMENT TO THE AUTHORITY'S RULES AND REGULATIONS WAS PUBLISHED IN THE FEDERAL REGISTER (VOL. NO. 46, NO. 154) ON TUESDAY, AUGUST 11, 1981, PAGES 40672 THROUGH 40675:

FEDERAL LABOR RELATIONS AUTHORITY; GENERAL COUNSEL OF THE FEDERAL LABOR RELATIONS AUTHORITY; AND FEDERAL SERVICE IMPASSES PANEL

5 CFR Parts 2422, 2423, 2424, 2425, and 2429

Processing of Cases: Amendment to Rules

AGENCY: Federal Labor Relations Authority and General Counsel of the Federal Labor Relations Authority.

ACTION: Final amendment of rules and regulations.

SUMMARY: These amendments provide that in unfair labor practice cases where exceptions to an Administrative Law Judge's decision are not filed with the Authority within the time limit provided and as otherwise prescribed, the findings, conclusions and recommendations of the Administrative Law Judge shall become, without precedential significance, those of the Authority, and all objections and exceptions thereto shall be deemed to have been waived. The Authority's experience has indicated that, while a significant percentage of the Authority's case processing time and effort is necessarily expended in reviewing decisions and orders of Administrative Law Judges, such time and effort is unwarranted where no exceptions disputing the Administrative Law Judge's decision are filed with the Authority. Furthermore, the Authority's expanding caseload, budgetary constraints, and consequent need to streamline procedures make imperative the expediting of cases where disputes have been substantially resolved among the parties. Thus, the Authority believes that the positive benefits that would result from such an amendment will enable the Authority to accomplish better its statutory duties.

These amendments also formalize provisions for the filing of requests for reconsideration of decisions and orders of the Authority; and otherwise clarify provisions in the existing rules related to such matters as the filing of documents in various proceedings, particularly provisions related to time limits, requests for extensions of those time limits, and the numbers of copies of documents required to be filed.

EFFECTIVE DATE: September 10, 1981.

FOR FURTHER INFORMATION CONTACT:

Jerome P. Hardiman, Director, Office of Operations and Technical Assistance, Authority (202) 254-7362.

S. Jesse Reuben, Deputy General Counsel, (202) 254-8305.

SUPPLEMENTARY INFORMATION: Effective January 28, 1980, the Authority, the General Counsel of the Authority and the Federal Service Impasses Panel published, beginning at 45 FR 3482, final rules and regulations principally to govern the processing of cases by the Authority, General Counsel and Panel under chapter 71 of title 5 of the United States Code. The rules and regulations are required by 5 U.S.C. 7134.

The parts of the final rules and regulations affected by the amendments promulgated here are: Parts 2422, 2423, 2424 and 2425, which, respectively, govern the processing of representation, unfair labor practice, negotiability and arbitration cases by the Authority and the General Counsel of the Authority; and Part 2429, which establishes the miscellaneous and general procedural requirements for parties in cases before the Authority.

Proposed amendments to the Authority's rules were published on pages 26488-26491 of the **Federal Register** of May 13, 1981, inviting written comments within 30 days ending June

12, 1981. Eight written comments were received regarding the proposed amendments: two from labor organizations and six from agencies.

A number of comments received concerned the proposed amendment to § 2423.29 of the Authority's rules and regulations. That amendment provides that in the absence of exceptions filed timely and in accordance with § 2423.27 of the rules and regulations, the findings, conclusions, and recommendations in an Administrative Law Judge's decision shall, without precedential significance, become the findings, conclusions, and decision and order of the Authority. In general, the comments reflected a concern that the amendment proposed would lead to an increase in the number of exceptions filed, would hinder the clear development of Authority case law, and would deprive the parties of useful and valuable precedent developed in litigation before the Administrative Law Judges.

The Authority's experience has indicated that, while a significant percentage of the Authority's case processing time and effort is necessarily expended in reviewing decisions and orders of Administrative Law Judges, such time and effort is unwarranted where no exceptions disputing the Administrative Law Judge's decision are filed with the Authority. Furthermore, the Authority's expanding caseload, budgetary constraints, and consequent need to streamline procedures make imperative the expediting of cases where disputes have been substantially resolved among the parties. Thus, the Authority believes that the positive benefits that would result from such an amendment will enable the Authority to accomplish better its statutory duties. However, the Authority also recognizes that Administrative Law Judge decisions can serve an informational function. The proposed amendment was not intended to detract from this function.

The two labor organizations that submitted comments indicated a concern that the Authority's proposed amendment of § 2424.4, requiring that the exclusive representative include as part of a negotiability appeal an explicit statement of its intent in making a proposal, imposed a requirement that was either (1) irrelevant to the resolution of a negotiability issue, to the extent that it sought information on the representative's "motive" in proposing the matter appealed, or (2) would restrict an exclusive representative's ability to refine its expression of the intent behind a proposal, in response to an agency's objections in the course of such a proceeding. As to the first comment, the amendment was designed to secure for the Authority an unambiguous statement in the papers submitted in a case of the meaning attributed to a proposal by the initiating party, rather than to elicit information concerning the motive the party had in making the proposal during negotiations. The amendment has been changed to reflect this. As to the second comment, efficient processing of negotiability cases by the Authority requires that the petition for review filed by the exclusive representative clearly frame the matter in dispute, in terms both of its explicit language and its meaning, so as to allow the parties in their subsequent pleadings to focus on the matter that the exclusive representative actually seeks to negotiate. Such a need does not preclude an exclusive representative from clarifying the meaning of its proposal when it files its response, should it find misconstructions of the proposal in the agency's statement filed in the case. However, the need to provide in the petition for review a clear basis for the subsequent submissions of the parties and the decision of the Authority as to whether the matter in dispute is within the duty to bargain under the Statute does call for the exclusive representative to establish the proposal's intended meaning in the initial appeal.

All of the comments submitted supported the revision of the Authority's regulations adding a new § 2429.17, which establishes a formal procedure for requesting reconsideration. One comment suggested that the party moving for reconsideration should only be required to establish good cause in support of the motion, rather than the extraordinary circumstances required by the proposed amendment. Comments also suggested that the filing of a motion for reconsideration should automatically stay the effectiveness of the Authority's action, and that the time limit for filing such a request be 30 rather than the amendment's 10 days.

After careful consideration of these comments, the Authority reaffirms the amendment as proposed. The promulgation of a formal procedure for seeking reconsideration of Authority decisions is not intended to detract from the finality of Authority decisions, except where extraordinary circumstances are established which warrant reconsideration by the Authority. In this regard, the Authority does not intend to change its practice with respect to granting or denying such requests. Hence, the granting of motions for reconsideration will continue to be the exception rather than the rule. The need for finality of the Authority's decisional processes dictates that such motions be promptly filed and that the filing of a request for reconsideration not result in an automatic stay.

Other comments were submitted concerning the proposed amendments, which amendments, in addition to those discussed above, clarify provisions pertaining to the filing of documents in various proceedings, particularly those related to time limits and the filing of requests for extensions of time; or otherwise modify provisions consonant with Authority policy determinations, interpretations of the Statute and established practice since promulgation of the final rules in January 1980. Included in the latter category are amendments to: § 2423.22(a), to establish a more stringent standard for motions to change hearing dates before Administrative Law Judges, and § 2429.1(a), to emphasize that the Authority may, in its sole discretion, remand cases which have been transferred to the Authority by Regional Directors upon stipulation by the parties. After careful consideration of all comments, the Authority decided that no revisions of these proposed amendments are warranted.

Accordingly, Parts 2422, 2423, 2424, 2425 and 2429 of the rules and regulations are amended to read as follows:

PART 2422—REPRESENTATION PROCEEDINGS

1. Section 2422.6 is amended by revising paragraph (d) to read as follows:

§ 2422.6 Withdrawal, dismissal or deferral of petitions; consolidation of cases; denial of intervention; review of action by regional director.

* * * * *

(d) The petitioner or party requesting intervention may obtain a review of such dismissal and/or denial by filing a request for review with the Authority within twenty-five (25) days after service of the notice of such action. Copies of the request for review shall be served on the Regional Director and the other parties, and a statement of service shall be filed with the request for review. Requests for extensions of time pursuant to § 2429.23(a) shall be in writing and received by the Authority not later than five (5) days before the date the request for review is due. The request for review shall contain a complete statement setting forth facts and reasons upon which the request is based. Any party may file an opposition to a request for review with the

Authority within ten (10) days after service of the request for review. Copies of the opposition to the request for review shall be served on the Regional Director and the other parties, and a statement of service shall be filed with the opposition to the request for review. The Authority may issue a decision or ruling affirming or reversing the Regional Director in whole or in part or making any other disposition of the matter as it deems appropriate.

* * * * *

2. Section 2422.14 is revised to read as follows:

§ 2422.14 Filing of briefs.

A party desiring to file a brief with the Authority shall file the original and four (4) copies within thirty (30) days from the close of the hearing. Copies thereof shall be served on all other parties to the proceeding. Requests for extensions of time pursuant to § 2429.23(a) to file briefs shall be submitted to the Regional Director, in writing, and copies thereof shall be served on the other parties and a statement of such service shall be filed with the Regional Director. Requests for extensions of time shall be in writing and received by the Regional Director not later than five (5) days before the date such briefs are due. No reply brief may be filed in any proceeding except by special permission of the Authority.

PART 2423—UNFAIR LABOR PRACTICE PROCEEDINGS

3. Section 2423.22 is amended by revising paragraph (a)(1) to read as follows:

§ 2423.22 Motions.

(a) *Filing of Motions.* (1) Motions made prior to a hearing and any response thereto shall be made in writing and filed with the Regional Director: *Provided, however,* That after the issuance of a complaint by the Regional Director any motion to change the date of the hearing shall be filed with the Chief Administrative Law Judge immediately upon discovery of the circumstance which in the judgment of the moving party warrants a change in the date of the hearing. The moving party shall attempt to contact the other parties and shall inform the Chief Administrative Law Judge of the positions of the other parties on the motion. Only in extraordinary circumstances will such a motion be granted where filed less than ten (10) days prior to the scheduled hearing. Motions made after the hearing opens and prior to the transmittal of the case to the Authority shall be made in writing to the Administrative Law Judge or orally on the record. After the transmittal of the case to the Authority, motions and any response thereto shall be filed in writing with the Authority: *Provided, however,* That a motion to correct the transcript shall be filed with the Administrative Law Judge.

* * * * *

4. Section 2423.25 is revised to read as follows:

§ 2423.25 Filing of briefs.

Any party desiring to submit a brief to the Administrative Law Judge shall file the original and four (4) copies within a reasonable time fixed by the Administrative Law Judge, but not in excess of thirty (30) days from the close of the hearing. Copies of any brief shall be served on all other parties to the proceeding and a statement of such service shall be filed with the Administrative Law Judge. Requests for extensions of time pursuant to § 2429.23(a) to file briefs shall be made to the Chief Administrative Law Judge, in writing, and copies thereof shall be served on the other parties. A statement of such service shall be furnished. Requests for extensions of time must be received not later than five (5) days before the date such briefs are due. No reply brief may be filed except by special permission of the Administrative Law Judge.

5. Section 2423.26 is amended by revising paragraphs (a) and (c) to read as follows:

§ 2423.26 Transmittal of the Administrative Law Judge's decision to the Authority; exceptions.

(a) After the close of the hearing, and the receipt of briefs, if any, the Administrative Law Judge shall prepare the decision expeditiously. The Administrative Law Judge shall prepare a decision even when the parties enter into a stipulation of fact at the hearing. The decision shall contain findings of fact, conclusions of law, and the reasons or basis therefore, including any necessary credibility determinations, and conclusions as to the disposition of the case including, where appropriate, the remedial action to be taken and notices to be posted.

* * * * *

(c) An original and four (4) copies of any exception to the Administrative Law Judge's decision and briefs in support of exceptions may be filed by any party with the Authority within twenty-five (25) days after service of the decision: *Provided, however,* That the Authority may for good cause shown extend the time for filing such exceptions. Requests for extensions of time pursuant to § 2429.23(a) to file exceptions must be received by the Authority not later than five (5) days before the date the exceptions are due. Copies of such exceptions and any supporting briefs shall be served on all other parties, and a statement of such service shall be furnished to the Authority.

* * * * *

6. Section 2423.28 is amended by revising paragraph (b) to read as follows:

§ 2423.28 Briefs in support of exceptions; oppositions to exceptions; cross-exceptions.

* * * * *

(b) Any party may file an opposition to exceptions, and/or cross-exceptions, and a supporting brief with the Authority within ten (10) days after service of any exceptions to an Administrative Law Judge's decision. Copies of any opposition and/or cross-exceptions and of any supporting briefs shall be served on all other parties, and a statement of such service shall be submitted with the documents filed with the Authority.

* * * * *

7. Section 2423.29 is amended by revising paragraph (a) to read as follows:

§ 2423.29 Action by the Authority.

(a) After considering the Administrative Law Judge's decision, the record, and any exceptions and related submissions filed, the Authority shall issue its decision affirming or reversing the Administrative Law Judge, in whole, or in part, or making such other disposition of the matter as it deems appropriate: *Provided, however,* That in the absence of exceptions filed timely and in accordance with § 2423.27, the findings, conclusions, and recommendations in the decision of the Administrative Law Judge shall, without precedential significance, become the findings, conclusions, decision and order of the Authority, and all objections and exceptions thereto shall be deemed waived for all purposes.

* * * * *

PART 2424—EXPEDITED REVIEW OF NEGOTIABILITY ISSUES

8. Section 2424.4 is amended by revising paragraph (a) to read as follows:

§ 2424.4 Content of petition; service.

(a) A petition for review shall be dated and shall contain the following:

(1) A statement setting forth the express language of the proposal sought

to be negotiated as submitted to the agency;

(2) An explicit statement of the meaning attributed to the proposal by the exclusive representative;

(3) A copy of all pertinent material, including the agency's allegation in writing that the matter, as proposed, is not within the duty to bargain in good faith, and other relevant documentary material; and

(4) Notification by the petitioning labor organization whether the negotiability issue is also involved in an unfair labor practice charge filed by such labor organization under Part 2423 of this subchapter and pending before the General Counsel.

* * * * *

PART 2425—REVIEW OF ARBITRATION AWARDS

9. Section 2425.1 is amended by revising paragraph (b) to read as follows:

§ 2425.1 Who may file an exception; time limits for filing; opposition; service.

* * * * *

(b) The time limit for filing an exception to an arbitration award is thirty (30) days beginning on and including the date of the award.

* * * * *

PART 2429—MISCELLANEOUS AND GENERAL REQUIREMENTS

10. Section 2429.1 is amended by revising paragraph (a) to read as follows:

§ 2429.1 Transfer of cases to the Authority.

(a) In any representation case under Part 2422 of this subchapter in which the Regional Director determines, based upon a stipulation by the parties, that no material issue of fact exists, the Regional Director may transfer the case to the Authority; and the Authority may decide the case on the basis of the formal documents alone. Briefs in the case must be filed with the Authority within thirty (30) days from the date of the Regional Director's order transferring the case to the Authority. In any unfair labor practice case under Part 2423 of this subchapter in which, after the issuance of a complaint, the Regional Director determines, based upon a stipulation by the parties, that no material issue of fact exists, the Regional Director may upon agreement of all parties transfer the case to the Authority; and the Authority may decide the case on the basis of the formal documents alone. Briefs in the case must be filed with the Authority within thirty (30) days from the date of the Regional Director's order transferring the case to the Authority. The Authority may also remand any such case to the Regional Director for further processing. Orders of transfer and remand shall be served on all parties.

* * * * *

11. Part 2429 is amended by adding a new § 2429.17 to read as follows:

§ 2429.17 Reconsideration.

After a final decision or order of the Authority has been issued, a party to the proceeding before the Authority who can establish in its moving papers extraordinary circumstances for so doing, may move for reconsideration of such final decision or order. The motion shall be filed within ten (10) days after service of the Authority's decision or order. A motion for reconsideration shall state with particularity the extraordinary circumstances claimed and shall be supported by appropriate citations. The filing and pendency of a motion under this provision shall not operate to stay the effectiveness of the action of the Authority, unless so ordered by the Authority. A motion for reconsideration need not be filed in order to exhaust administrative remedies.

12. Section 2429.22 is revised to read as follows:

§ 2429.22 Additional time after service by mail.

Whenever a party has the right or is required to do some act pursuant to this subchapter within a prescribed period after service of a notice or other paper upon such party, and the notice or paper is served on such party by mail, five (5) days shall be added to the prescribed period: *Provided, however,* That five (5) days shall not be added in any instance where an extension of time has been granted.

13. Section 2429.23 is amended by revising paragraph (d) to read as follows:

§ 2429.23 Extension; waiver.

* * * * *

(d) Time limits established in 5 U.S.C. 7117(c)(2) and 7122(b) may not be extended or waived under this section.

* * * * *

14. Section 2429.25 is revised to read as follows:

§ 2429.25 Number of copies.

Unless otherwise provided by the Authority or the General Counsel, or their designated representatives, as appropriate, or under this subchapter, any document or paper filed with the Authority, General Counsel, Administrative Law Judge, Regional Director, or Hearing Officer, as appropriate, under this subchapter, together with any enclosure filed therewith, shall be submitted in an original and four (4) copies. A clean copy capable of being used as an original for purposes such as further reproduction may be substituted for the original.

* * * * *

Note.—In accordance with section 605(b) of the Regulatory Flexibility Act of 1980, the Federal Labor Relations Authority and the General Counsel of the Federal Labor Relations Authority have determined that this document does not require preparation of a Regulatory Flexibility Analysis. Furthermore, the amendments do not significantly affect the environment so as to require the preparation of an environmental impact statement.

Dated: August 5, 1981.

Ronald W. Haughton,

Chairman.

Henry B. Frazier III,

Member.

Leon B. Applewhaite,

Member.

H. Stephan Gordon,

General Counsel.

Federal Labor Relations Authority.

[FR Doc. 81-23328 Filed 8-10-81, 8:45 am]

BILLING CODE 6727-01-M

Federal Labor Relations Authority

1900 E Street, NW.
Washington, D.C. 20424

INFORMATION ANNOUNCEMENT July 27, 1981

THE FOLLOWING NOTICE WAS PUBLISHED IN THE FEDERAL REGISTER (VOL. NO. 46, NO. 143) ON MONDAY, JULY 27, 1981, PAGES 38404 AND 38405:

FEDERAL LABOR RELATIONS AUTHORITY

Application of Official Time Provision to Local Agreement Negotiations

AGENCY: Federal Labor Relations Authority.

ACTION: Notice relating to application of official time provision to local agreement negotiations.

SUMMARY: This notice related to the application of official time provision to the negotiation of a local agreement which supplements a national or controlling (master) agreement.

DATE: Written comments must be submitted by the close of business on August 28, 1981, to be considered.

ADDRESS: Send written comments to the Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

FOR FURTHER INFORMATION CONTACT: James J. Shepard, Executive Director, 1900 E Street NW., Washington, D.C. 20424, (202) 254–9595.

SUPPLEMENTARY INFORMATION: The Federal Labor Relations Authority was established by Reorganization Plan No. 2 of 1978, effective January 1, 1979 (43 FR 36037). Since January 11, 1979, the Authority has conducted its operations under the Federal Service Labor-Management Relations Statute (92 Stat. 1191).

Upon receipt of a request and consideration thereof, the Authority has determined that issuance of a general statement of policy and guidance is warranted. Interested persons are invited to express their views in writing on this matter, as more fully explained in the Authority's notice set forth below:

July 24, 1981.

To Heads of Agencies, Presidents of Labor Organizations and Other Interested Persons:

The Authority recently received a request from the Federal Service Impasses Panel, pursuant to § 2429.4 of the Authority's rules and regulations (5 CFR 2429.4), that the authority address a major policy issue arising in a case before the Panel. In connection with a Panel proceeding, concerning the quantity of official time that a master agreement should authorize union representatives engaged in the negotiations of supplemental agreements, the Union asserted entitlement to the official time under section 7131(a) of the Statute when engaged in negotiating such supplemental agreements. The Authority is of the opinion that this issue raises a question of general applicability under the Federal Service Labor-Management Relations Statute (the Statute) (5 U.S.C. 7101–7135) which the Authority deems can be best resolved through issuance of a general statement of policy and guidance.

Accordingly the Authority hereby determines, pursuant to its powers under section 7105(a)(1) of the Statute, that an interpretation of the Statute is warranted on the following:

Whether section 7131(a) of the Federal Service Labor-Management Relations Statute (5 U.S.C. 7131(a)), which authorizes official time to employees representing an exclusive representative in the negotiation of a collective bargaining agreement, applies to the negotiation of a local agreement which supplements a national or controlling (master) agreement.

Before issuing an interpretation on the above, the Authority solicits your views in writing. To receive consideration, such views must be submitted to the Authority by the close of business on August 28, 1981.

Issued, Washington, D.C., July 24, 1981.

Federal Labor Relations Authority.

Ronald W. Haughton,

Chairman.

Henry B. Frazier III,

Member.

Leon B. Applewhaite,

Member.

[FR Doc. 81-21791 Filed 7-24-81; 8:45 am]

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Federal Labor Relations Authority

1900 E Street, NW.
Washington, D.C. 20424

INFORMATION ANNOUNCEMENT May 29, 1981

On May 14, 1981, the Members of the Federal Labor Relations Authority held an open meeting in Room N5437-Department of Labor to hear status reports in a number of key areas of the agency's operation. Chairman Ronald W. Haughton, Member Henry B. Frazier III and Member Leon B. Applewhaite opened the meeting (at 10:10 a.m.) under the "Government in the Sunshine" Act in order to give representatives of the press and other interested observers an opportunity to sit in on the proceeding.

The information was presented in a series of six briefings by key officials of the agency. Following is a summary of their reports to the Authority Members. It is based on the official transcript of the meeting, which is available for public inspection at the Authority's offices at 1900 E Street, N.W. - Room 7677 - in Washington, D.C.

Authority Workload, Resources and Management Processes (James J. Shepard, Executive Director)

At the national office level, the Authority's caseload each quarter has exceeded output. A rise in caseload has been steady, and in some areas almost geometric, resulting in a growing backlog.

- There has been a steady rise in the number of arbitration appeals, from 11 cases in the second quarter of fiscal 79 to 34 cases in second quarter FY 81.

- Negotiability appeals have declined from 76 cases to 34 cases over the same period; typically, however, a negotiability case may involve more than a dozen separate issues.

- After peaking at 38 cases in third quarter FY 80, representation cases have drifted down to 32 per quarter in the most recent fiscal period.

- There has been tremendous growth in unfair labor practice case intake, which has jumped from 20 cases in fourth quarter FY 79 to 90 cases in second quarter FY 81.

Like other agencies, the Authority must operate with a fixed level of resources. Work is under way to improve the agency's case processes, and some success already has been achieved--e.g., the Authority has adopted processing standards and accountability measures. Proposed changes in the Authority's Rules and Regulations (which appeared in the May 13, 1981, Federal Register) would further streamline case processing, and the Authority has altered its internal distribution of resources to achieve additional improvements in productivity. Despite these improvements in productivity, however, the backlog continues to build as over-all case intake increases rapidly.

Organization and Operation of Office of Chief Counsel (Paul E. Klein, Chief Counsel, Office of Case Handling)

The Authority's Office of Chief Counsel recently adopted an Assistant Chief Counsel system, with three Assistant Chief Counsels specializing in respective subject-areas (arbitration, representation and unfair labor practices, and negotiability). The case handling staff has been organized into seven teams, with the resources applied to subject-areas in which case-work is heaviest: three teams in the representation/unfair labor practice area, three teams in negotiability, and one team in arbitration.

In the area of negotiability, the proposed regulations (cited above) would require the party which formulated the disputed contract proposal to delineate the intent and meaning (as well as the specific language) of such proposal in its filing with the Authority. This is expected to speed up the processing and resolution of negotiability appeals.

While it is important to expedite cases and to attack the growing backlog, the Office of Chief Counsel will be careful not to sacrifice quality for quantity. Decisions which are drafted for consideration by the Members will contain enough rationale so the parties know why the case was decided a certain way, and this rationale will be important also in cases which are appealed to the courts for review under the Statute. In addition to setting out the controlling facts and rationale, decisions will contain guidance. Hopefully, such guidance will reduce a perceived need to bring more test cases on the same subject-issue.

Given the Authority's ever-increasing caseload, the time required to process and resolve a case must be viewed as a two-way street. While the Authority can and is achieving some improvement through internal productivity measures, it also requires cooperation of parties to bring only meaningful issues to the Authority. The Authority is emphasizing that need with agency and union representatives, and is identifying the more crucial cases as they come to the Authority for priority consideration and expedited processing.

Technical Assistance Projects (Jerome P. Hardiman, Director of Operations and Technical Assistance)

Several months ago, the Authority identified what agency and union representatives perceived to be critical needs in the area of technical assistance and, to the extent possible within FLRA's budget and staffing constraints, the Authority has provided resources to meet those needs. Following are the results of such efforts, to date:

Reports of Case Decisions--Now they include subject-matter index entries and issue-related digest notes rather than factual summaries. Also, the Authority, with Government Printing Office (GPO) cooperation and assistance, has reduced from four months to three weeks the lag between when a decision is issued and when subscribers receive it from GPO.

- Subject-Matter Indexes--The Authority has issued the Indexes for Volumes 1 and 2 decisions (i.e., all Authority decisions with the prefix "1 FLRA No. ..." and "2 FLRA No. ..."). The Index for Volume 3 decisions is at GPO, and the Index for Volume 4 will go to GPO by the end of June 1981.

- Digests--The Authority has just completed work on the Digests through Volume 4 decisions. The Digest for Volume 1 has issued. The Digest for Volume 2 is at GPO. The Digest for Volume 3 will go to GPO in June and for Volume 4 in July.

- Citator--The Authority has issued a Citator through all the decisions in Volume 3, and the staff presently is updating the Citator to cover Volume 4 and Volume 5 decisions as well.

- Bound Volumes--Bound Volume 1 of Authority decisions is scheduled for publication in June. Volume 2 is due to be published in July. Volume 3 is in preparation, and will be sent to GPO shortly.

Many of the early cases decided by the Authority had arisen under Executive Order 11491. A future goal of the Authority will be to provide a consolidated subject-matter index and a consolidated digest pulling together in a single reference source all of the Authority's decisions in cases which arose under the Statute.

Within the technical assistance area, the Authority has achieved dollar savings in a number of ways:

--Reducing the size of paper in case reports to the same size as used in the bound volumes saves $1,000 a year just in mailing costs.

--Utilizing word processing equipment and changing pagination in case reports to make them compatible with the bound volumes will save an estimated $5,000 a year in set-up (camera) costs for printing.

--Eliminating case summaries, in addition to saving staff time, saves about $4,000 a year in printing costs (the subject-matter index is provided in lieu of the summaries).

Program for National Headquarters Office (Guy R. Rankin, Director of Administration)

The Office of Administration includes the internal personnel, financial management and office services functions of the agency.

The Authority has approved internal regulations developed by the Personnel Office in a number of areas: attorney recruitment and in-service placement; merit staffing; leave administration; part-time employment; performance appraisal and awards (separately for members of the Senior Executive Service and for non-SES employees of FLRA); cooperative education program; executive resources management; and probationary periods for supervisors and managers. (A number of other personnel regulations are being developed.)

The agency's internal Merit Pay Regulation has been approved by the Office of Personnel Management. The October 1, 1981, statutory deadline for agency implementation of merit pay and performance appraisal systems will be met by FLRA.

Currently, the agency is staffed to 97 percent of its authorized level--354 positions filled, out of 363 authorized (157 out of 160 for the Authority, 197 out of 203 for the General Counsel including the Regional and field offices).

In July 1980, the Authority's Financial Management Division converted the agency's payroll from OPM's data processing system to the Department of Interior system (DIPS). The conversion has been orderly and successful.

FLRA's budget, which had registered an average increase of 20 percent a year, is stabilizing with only a 5 percent gain projected in the 1982 budget. The FY 82 budget is in the amount of $16,812,000 and 351 full-time equivalent positions.

The agency's space requirements are a responsibility of the Office Services Division. Of the 13 Regional and sub-regional offices, all but two (Washington and New York) are in permanent space. The Washington and New York Regional Offices are expected to be in permanent quarters by the end of the current fiscal year.

The Authority finally is closing in on permanent space to integrate and house its national office operations--both the Authority and the General Counsel of FLRA. This development crowns two years of intensive effort to locate and secure suitable national office space, including being twice offered space at M Street and having the offers withdrawn and including Congressional Committee approval of a prospectus to lease space.

The agency's national office will be located at 500 C Street, S.W., in a complex to be known as Federal Center Plaza.

Foreign Service Labor Relations Program (Harold D. Kessler, Deputy Executive Director)

Effective February 15, 1981, the Foreign Service Labor-Management Relations Statute created a Board and an Impasse Disputes Panel within FLRA. The Foreign Service Labor Relations Board consists of the FLRA Chairman, as Chairperson of the Board, and two other members appointed by him. The General Counsel of FLRA serves also as General Counsel for the Board. The Foreign Service Impasse Disputes Panel consists of five members, also appointed by the Chairperson of the Board. The staff support for the Board and the Disputes Panel is provided by FLRA.

The critical staff effort under the Foreign Service program to date has been to issue implementing regulations. While the staff used existing FLRA regulations as a starting-point, the Foreign Service program regulations had to reflect the significant variances in that Statute and required major modifications from the existing regulations. The Foreign Service program regulations were issued on an interim basis with comments invited no later than June 15, 1981, and an expiration date of July 30, 1981, for replacement by permanent regulations. The effort involved agencies and labor organizations which historically have operated in the Foreign Service by giving them an opportunity to give their views prior to issuing the interim regulations.

It is expected that there will be a significant caseload in the Foreign Service program--raising unique questions of jurisdiction and adjudication and placing extraordinary travel demands on investigators and Administrative Law Judges which will have to come out of existing FLRA resources. There are no separately provided funds for the administration of that program.

General Counsel Workload Statistics and Processes (H. Stephan Gordon, General Counsel)

The Office of General Counsel (OGC) has jurisdiction over unfair labor practice charges and representation petitions--both of which are initiated with case filings in FLRA's Regional Offices. During the first six months of FY 81, intake totaled 3,217 new cases--an increase of 24.5 percent compared with the same period in fiscal 1980. Average monthly intake is running at 536 cases (as against 464 cases a year earlier), and 698 cases were received in March alone. If the March intake becomes a trend (instead of simply an aberration), the agency simply would be unable to cope with current resources. Based on intake in recent months (not counting March), OGC's incoming caseload may exceed this year's budget estimates by almost 1,000 cases.

The growth category is unfair labor practice cases, which typically involve multiple charges and which account for the bulk of the OGC caseload. In the first six months of FY 81, 263 new representation cases were received--slightly below the representation case intake during the same period in fiscal 1980.

Despite restraints on hiring, the Office of General Counsel improved productivity over a year earlier by about 12 percent--disposing of 3,058 cases in the first six months of FY 81. These included dispositive actions in 547 unfair labor practice complaints through settlement or litigation before Administrative Law Judges, 71 representation hearings and 97 representation elections. FLRA recently concluded the most noteworthy, prominent and difficult election in the history of the agency--among employees of the Panama Canal Commission--and the first ever held in a foreign country among foreign nationals. This historic election was successfully conducted by agency staff who traveled to the Panama Canal Area for that purpose.

There also has been a dramatic increase in productivity by the Regional Offices in terms of reducing the number of "over-age" cases--i.e., those in which dispositive action occurs more than 60 days (the time-target) after filing of the charge. The number of over-age cases dropped from 497 in March 1980 to 104 cases at the end of March 1981--an improvement of about 80 percent--making the Regional operations "current" for all practical purposes.

The "merit factor" has remained constant at approximately 40 percent since the inception of agency operations--that is, following full investigation, approximately 40 percent of cases have been found to have merit. And in the first six months of FY 81, voluntary settlements have been obtained in 86 percent of all merit cases. As a result, fewer than 6 percent of all unfair labor practice charges filed need to be litigated through the full process leading to decision by the Authority. A drop of 1 percentage point in the total settlement rate would result in an additional processing cost of about $110,000.

The Office of General Counsel took dispositive actions in the first six months of FY 1981 at an annual rate of 72 cases per staff-year, a 10 percent productivity improvement over fiscal 1981 budget estimates, resulting in a cost per case action of well below $1,500 at the OGC level.

Chairman Haughton, Member Frazier and Member Applewhaite thanked the speakers for their presentations and closed the meeting at 11:45 a.m.

UNITED STATES

FEDERAL LABOR RELATIONS COUNCIL

1900 E. STREET, N.W. WASHINGTON, D.C. 20415

INFORMATION ANNOUNCEMENT July 2, 1976

To Heads of Agencies, Presidents of Labor Organizations, and Other Interested Parties:

I. INTRODUCTION

In furtherance of its responsibility to administer Executive Order 11491, as amended, the Council has determined that the following general guidance concerning grievance arbitration in the Federal service and Council review of arbitration awards should be issued.

Executive Order 11491, as amended, requires that agreements negotiated between agencies and labor organizations covering employees in an exclusive bargaining unit include a negotiated grievance procedure. The parties are free to negotiate the coverage and scope of the grievance procedure so long as it does not otherwise conflict with statute or the Order; and matters for which statutory appeal procedures exist are the sole mandatory exclusion prescribed by the Order. Section 13(a) of the Order provides, in pertinent part:

> Sec. 13. Grievance and arbitration procedures. (a) An agreement between an agency and a labor organization shall provide a procedure, applicable only to the unit, for the consideration of grievances. The coverage and scope of the procedure shall be negotiated by the parties to the agreement with the exception that it may not cover matters for which a statutory appeal procedure exists and so long as it does not otherwise conflict with statute or this Order. It shall be the exclusive procedure available to the parties and the employees in the unit for resolving grievances which fall within its coverage. . . .

Section 13(a) is intended to ensure that the parties will develop a procedure to resolve grievances that arise during the life of an agreement and thereby to promote the practical resolution of differences between the parties. Thus, the Order recognizes that the parties to an agreement should be basically free to fashion a negotiated grievance procedure suited to their particular needs, and that the negotiation of such a procedure is an inherent part of the collective bargaining process. It permits, with minimal restrictions, diversity and variation in negotiated grievance procedures in the Federal sector. As the Council indicated in its Report and Recommendations which led to the issuance of section 13(a) in its present form:

> The Council has carefully considered whether the Order should contain any specific limitations upon the scope and coverage of negotiated grievance procedures other than the exclusion of matters covered by statutory appeal procedures. It has concluded that the Order should not contain any other specific limitations. Instead, the coverage and scope of the negotiated grievance procedure should be negotiated by the parties, so long as it does not otherwise conflict with statute or the Order, and matters for which statutory appeal procedures exist should be the sole mandatory exclusion prescribed by the Order. This will give the parties greater flexibility at the negotiating table to fashion a negotiated grievance procedure which suits their particular needs. For example, it will permit them to include grievances over agency regulations and policies, whether or not the regulations and policies are contained in the agreement, provided the grievances are not over matters otherwise excluded from the negotiations by sections 11(b) and 12(b) of the Order or subject to statutory appeal procedures. Moreover, it will eliminate the problems which have arisen concerning the meaning of the term "any other matters."
>
> Thus, with this recommended change in section 13 of the Order, the parties may, through provisions in their negotiated agreement, agree to resolve grievances over matters covered by agency regulations and within the discretion of agency management through their negotiated grievance procedure. In fact, with this change, the parties may make their negotiated grievance procedure the exclusive procedure for resolving grievances of employees in the bargaining unit over agency policies and regulations not contained in the agreement. If the parties should agree to make the negotiated procedure the exclusive procedure, grievances over agency policy and regulation, to the extent covered thereby, would no longer be subject to grievance procedures established by agency regulations. In this connection, we also recommend that section 7(d)(1) of the Order be amended to reflect the possibility that the negotiated grievance procedure may replace the agency grievance procedure to the extent agreed upon by the parties.1/

The parties may choose to provide for arbitration of grievances as a part of their negotiated procedure. Section 13(b) provides:

> A negotiated procedure may provide for arbitration of grievances. Arbitration may be invoked only by the agency or the exclusive representative. Either party may file exceptions to an arbitrator's award with the Council, under regulations prescribed by the Council.

This section reflects recognition of the arbitral process as a means of settling grievance disputes in the Federal sector. However, the decision as to whether arbitration will be an integral part of the negotiated grievance procedure is reserved to the negotiation process. Hence, where provision is made for arbitration of grievances, it operates within a framework established by the parties.

Since E.O. 11491 became effective on January 1, 1970, binding arbitration has been sanctioned in the Federal sector, and today the number of negotiated grievance procedures which provide for arbitration has reached substantial proportions. Thus, the Civil Service Commission's Office of Labor-Management Relations, using its Labor Agreement Information Retrieval System (LAIRS), indicates that as of December 1975, nearly 86 percent of the negotiated agreements under the Order in the LAIRS file provide for arbitration as part of the grievance process and 88 percent of those provide that such arbitration shall be final and binding. Concordant with the foregoing, the LAIRS statistics indicate that the use of arbitration in the Federal sector has grown significantly since 1970. In 1970 there were 67 arbitrations in the Federal sector, only 13 (19 percent) of which were binding, with the remainder advisory. In 1975, however, there were, according to statistics available through March 1, 1976, 214 arbitrations, 197 (92 percent) of which were binding.

II. COUNCIL REVIEW OF ARBITRATION AWARDS

A. GENERAL

Section 13(b) of the Order, as quoted above, provides that exceptions to arbitration awards may be filed with the Council. (This is also provided for in section 4(c)(3) of the Order.) Although parties are free to file exceptions to arbitration awards with the Council, the grounds upon which the Council will grant review of such awards are limited in nature.

The concept of permitting arbitration in the Federal sector with review of such awards limited to certain specified grounds was first reflected in the Study Committee's Report and Recommendations, which led to the issuance of Executive Order 11491 in 1969. Concerning arbitration, the Report stated, in part:

> . . . We feel that arbitrators' decisions should be accepted by the parties. Challenges to such awards should be sustained only on grounds similar to those applied by the courts in private sector labor-management relations, and procedures for the consideration of exceptions on such grounds should be developed by the Council. . . .[2/]

In keeping with the intent of the Order, as reflected in this passage from the Study Committee's Report and Recommendations, the Council has issued regulations which prescribe the limited grounds upon which it will grant a petition for review of an arbitration award. Section 2411.32 (5 CFR 2411.32) of the Council's regulations governing review of arbitration awards provides, in pertinent part:

> The Council will grant a petition for review of an arbitration award only where it appears, based upon the facts and circumstances described in the petition, that the exceptions to the award present grounds that the award violates applicable law, appropriate

> regulation, or the order, or other grounds similar to those upon which challenges to arbitration awards are sustained by courts in private sector labor-management relations. . . .

A bare assertion of one of the grounds upon which the Council grants review is not sufficient for the Council to accept the petition for review. The Council's rules require not only that the exceptions present one or more grounds, but also that sufficient facts and circumstances be presented to support the ground(s) alleged. It is not the responsibility of the Council to complete for a party the research necessary to support an allegation of a ground upon which that party believes the Council should modify, set aside, or remand an award, or the research necessary to refute such an allegation.

If a petition for review is accepted, section 2411.36 of the Council's rules (5 CFR 2411.36) provides that the parties may file briefs in the matter. These briefs should contain specific references to the pertinent documents and, where applicable, citations of relevant authorities.[3/]

It is important to note that the acceptance of a petition for review does not connote that the award will be modified, set aside, or remanded. If a petition for review of an arbitration award is granted by the Council, section 2411.37(a) (5 CFR 2411.37(a)) of the Council's rules provides:

> An award of an arbitrator shall be modified, set aside in whole or in part, or remanded only on grounds that the award violates applicable law, appropriate regulation, or the order, or other grounds similar to those applied by the courts in private sector labor-management relations.

Thus, the Council must itself find that the facts and circumstances presented <u>actually</u> establish support for the ground(s) upon which it is sought to have the award modified, set aside or remanded.

Under the Council's rules, therefore, a petition for review of an arbitrator's award will be granted only where it appears, based upon the facts and circumstances described in the petition, that it presents grounds that the award violates applicable law, appropriate regulation, or the Order, or other grounds similar to those upon which challenges to arbitration awards are sustained by courts in the private sector. These grounds will now be considered.

B. GROUNDS: THE AWARD VIOLATES APPLICABLE LAW, APPROPRIATE REGULATION, OR THE ORDER

The Council's rules embody the limited grounds for challenging arbitration awards outlined by the Study Committee in 1969, i.e., "only on grounds similar to those applied by the courts in private sector labor-management relations." The added specificity in the Council's rules with the reference to "applicable law, appropriate regulation, or the order," codifies grounds

similar to certain grounds applied by courts in the private sector--namely, challenges to arbitration awards will be sustained by a court where it can be shown, for example, that the award is contrary to law or public policy or that compliance with the award would require the performance of an illegal act.[4/]

While these grounds are similar to certain grounds applied by courts in the private sector, the added specificity clearly recognizes the significant impact of the extensive body of statutes and regulations which govern many aspects of the employer-employee relationship in the Federal sector. The impact of these grounds and their significance to the arbitral process are much greater in the Federal sector because of the many major employee benefits and protections and the broad range of fundamental personnel policies and practices which are found in statutes, appropriate regulations, and the Order. This impact is clearly demonstrated by a review of statistics concerning appeals from arbitration awards filed with the Council, which indicate that over three-quarters of the appeals accepted were based on these grounds.[5/]

The importance of the legal framework governing employees in the Federal sector is acknowledged in section 12(a) of the Order, which requires that the administration of each negotiated agreement be governed by laws, the regulations of appropriate authorities, including policies set forth in the Federal Personnel Manual, and certain agency policies and regulations.[6/] In this regard, the Council has pointed out that should a negotiated grievance procedure provide for arbitration, an arbitrator considering a grievance alleging a violation of a contract provision which refers to agency policies and regulations could not consider such a grievance in a vacuum. As the January 1975 Report and Recommendations on the Amendment to the Order indicated, "arbitrators of necessity now consider the meaning of laws and regulations, including agency regulations, in resolving grievances arising under negotiated agreements because provisions in such agreements often deal with substantive matters which are also dealt with in law or regulation and because section 12(a) of the Order requires that the administration of each negotiated agreement be subject to such law and regulation."[7/] The Council has also pointed out in this regard that while section 12(a) constitutes an obligation in the administration of labor agreements to comply with the legal and regulatory requirements cited therein, it is not an extension of the negotiated grievance procedure to include grievances over all such requirements.[8/] Further, the January 1975 Report went on to state:

> Of course, final decisions under negotiated grievance procedures, including final and binding awards by arbitrators where the negotiated procedure makes provision for such arbitration, must be consistent with applicable law, appropriate regulation or the Order. Thus, where it appears, based upon the facts and circumstances described in a petition before the Council, that there is support for a contention that an arbitrator has issued an award which violates applicable law, appropriate regulation or the Order,

> the Council, under its rules, will grant review of the award. For example, should the Council find that an award violates the provisions of title 5, United States Code, or that an award violates the regulations of the Civil Service Commission, or that an award violates section 12(b) of the Order, the Council would modify or set aside that award.[9]

We turn now to a more detailed examination of the respective grounds of violation of applicable law, appropriate regulation, and the Order.

1. The Award Violates Applicable Law

The Council has accepted petitions for review of arbitration awards where the exceptions to the award present the ground that the award violates applicable law. As noted previously, such appeals are accepted only where they are supported by facts and circumstances described in the petition for review. Thus, where a petition asserts that the award is contrary to law but fails to describe facts and circumstances to support such an assertion, review of the petition will be denied.[10]

Where the Council has accepted appeals of arbitration awards on the ground that the award violates applicable law, the statute involved has often dealt with pay matters such as the Back Pay Act of 1966 (5 U.S.C. § 5596)[11] or an overtime pay statute, such as is codified in 5 U.S.C. § 5544.[12] Awards which direct the expenditure of Federal funds will be set aside where such expenditure is unsupported by, or contrary to, law. In this regard, it should be emphasized that any payment of Federal funds by an agency directed by an arbitrator must be authorized by law in order to be capable of implementation. Thus, an award directing an agency to pay to a union money in the nature of punitive damages could not be implemented because there was no legal authority for awarding punitive damages against the United States or one of its agencies and, in addition, the Federal Tort Claims Act (28 U.S.C. § 2674) specifically excludes recovery for punitive damages.[13]

Where there is a statutory basis for the payment of money, such as the Back Pay Act, the Council, consistent with the decisions of the Comptroller General,[14] has upheld arbitration awards directing such payment, provided the requirements of the statute have been met. Thus, the violation of an otherwise valid mandatory provision in a negotiated agreement, whether by an act of omission or commission, which causes an employee to lose pay, allowances, or differentials is an unjustified or unwarranted personnel action under the Back Pay Act (as is an improper suspension, furlough without pay, demotion or reduction in pay). In those circumstances, the Back Pay Act is the appropriate statutory authority for compensating an employee for pay, allowances, or differentials he would have received, but for the violation of the negotiated agreement. However, before any monetary payment may be made under the provisions of that Act, there must be a determination not only that an employee has undergone an unjustified or unwarranted personnel action, but also that such action directly resulted

in a withdrawal of pay, allowances, or differentials, as defined in applicable Civil Service regulations. Although every personnel action which directly affects an employee and is determined to be a violation of the negotiated agreement may also be considered to be an unjustified or unwarranted personnel action, the remedies under the Back Pay Act are not available until the "but for" test is met. That is, the expenditure of funds under the Act is not permissible unless it is also established that, but for the wrongful action, the withdrawal of pay, allowances, or differentials would not have occurred. Thus, in order to make a valid award of backpay, it is necessary for an arbitrator in the Federal sector not only to find that the otherwise valid mandatory provision in a negotiated agreement has been violated by the agency, but also to find that such improper action directly caused the grievant(s) to suffer a loss or reduction in pay, allowances, or differentials. Where there is no showing that but for the wrongful act (the contract violation) the harm to the individual employee (loss of pay, allowances or differentials) would not have occurred, there is no basis in statute to support an award of backpay.[15/]

2. The Award Violates Appropriate Regulation

The Council has accepted petitions for review of arbitration awards where the exceptions to the award present the ground that the award violates appropriate regulation. Again, as noted previously, such appeals are accepted only where they are supported by facts and circumstances described in the petition for review. Thus, the Council has denied review where a party simply cited and paraphrased a regulation, advancing no persuasive arguments in support of the exception and describing no facts and circumstances sufficient to show that any basis exists for granting review of the award under the exception.[16/]

In addition to providing facts and circumstances to support the exception, the appeal must present grounds that the award violates an appropriate regulation within the meaning of the Council's rules. The Council has found that regulations promulgated by authorities outside the agency, such as Civil Service Commission regulations,[17/] are appropriate regulations within the meaning of the Council's rules.

However, as to an agency's internal regulations, the Council has held that the interpretation of contract provisions, including the interpretation of agency policies and regulations on matters within agency discretion where those policies or regulations are specifically incorporated in a negotiated agreement, is a matter to be left to the judgment of the arbitrator unless the agreement provides otherwise. Hence, where an arbitration award interprets and applies such regulations and the petition for review contends that the arbitrator misinterpreted and, hence, violated such regulations, the petition does not present a ground upon which the Council will grant review of the award because the regulation is not an appropriate regulation within the meaning of the Council's rules.[18/]

Further, the Council has held that where an arbitrator, in the course of rendering his award, considers an agency regulation which was introduced by the parties and which deals with the same subject matter as the provision of the negotiated agreement in dispute, and thereafter applies that regulation in reaching his judgment in the case, a petition for review contending that the award violates the agency regulation does not, in such circumstances, present a ground that the award violates an appropriate regulation within the meaning of the Council's rules.[19]

Where an appeal has been accepted on the ground that the award violates appropriate regulation and it is subsequently found by the Council that the award is contrary to the regulation, the award is modified or set aside.[20]

3. The Award Violates the Order

The Council has accepted petitions for review of arbitration awards where the exceptions to the award present the ground that the award violates the Order.[21] A party filing an exception to an award on this ground should specify the provision(s) of the Order involved and must provide facts and circumstances to demonstrate how the award appears to violate the cited provision(s) of the Order.[22]

Each alleged violation of a provision of the Order by an award is not, of course, thereby subject to review. For example, a contention that an award violates section 19 of the Order because the arbitrator failed to consider and decide, during the course of a grievance arbitration hearing, whether an unfair labor practice has been committed under section 19 of the Order, does not state a ground upon which the Council will accept a petition for review of an arbitration award.[23] In this regard, the Order charges the Assistant Secretary of Labor for Labor-Management Relations with the responsibility for deciding unfair labor practice complaints. Section 19(d) of the Order provides that where an issue may be raised under a grievance procedure or under the unfair labor practice procedures of the Order, the aggrieved party may elect to use either one of the procedures but not both. Where he elects to use the grievance procedure, the grievance decision is not to be construed as an unfair labor practice decision nor as precedent for such decisions.

Only two appeals have resulted in awards being modified or set aside on this ground alone. In one case,[24] the Council found that the award violated the Order by interpreting and applying the seniority clause of a collective bargaining agreement in such a manner as to infringe upon the right reserved to management under section 12(b)(5). The Council found that the award (which compelled a VA hospital to treat one category of personnel as being the functional equivalent of, and interchangeable with, another category even though their assigned duties were distinctly different) interfered with management's reserved right under section 12(b)(5) of the Order to determine the type of personnel by which its hospital

services are to be performed. In the other case,[25] the Council found that the award, insofar as it directed the agency to take action to fill a position, violated the Order by interfering with rights reserved to management officials under section 12(b)(2). Management's reserved rights under section 12(b) of the Order may not be infringed by an arbitrator's award under a negotiated grievance procedure.

C. GROUNDS: THE EXCEPTIONS TO THE AWARD PRESENT OTHER GROUNDS SIMILAR TO THOSE UPON WHICH CHALLENGES TO ARBITRATION AWARDS ARE SUSTAINED BY COURTS IN PRIVATE SECTOR LABOR-MANAGEMENT RELATIONS

The Council's decisions as of the date of this Information Announcement reveal that at least six grounds have been recognized under this rubric: (1) the arbitrator exceeded his authority; (2) the award does not draw its essence from the collective bargaining agreement; (3) the award is incomplete, ambiguous or contradictory so as to make implementation of the award impossible; (4) the award is based on a nonfact; (5) the arbitrator was biased or partial; and (6) the arbitrator refused to hear pertinent and material evidence.

1. The Arbitrator Exceeded His Authority

The Council's rules provide, as noted above, that it will grant a petition for review on "other grounds similar to those upon which challenges to arbitration awards are sustained by courts in private sector labor-management relations." Of these, one of the most frequently cited is that the arbitrator exceeded his authority. The Council will grant a petition for review of an arbitration award where it appears, based upon the facts and circumstances described in the petition, that the exceptions to the award present the ground that the arbitrator exceeded his authority by determining an issue not included in the question(s) submitted to arbitration.[26] In one case where such an appeal was accepted, the Council held that an arbitrator answered a question not presented to him and thereby exceeded his authority when he awarded relief under the agreement to two nongrievants.[27] On the other hand, the arbitrator does not exceed his authority when, in addition to determining those issues specifically included in the particular question submitted to arbitration, the award extends to issues that necessarily arise therefrom.[28] Furthermore, the Council held in a recent decision that "if there is not a submission agreement with a precise issue, an arbitrator in the Federal sector has unrestricted authority to pass on any dispute presented to him so long as it is within the confines of the collective bargaining agreement."[29] In sustaining the arbitrator's award which the agency alleged went beyond the scope of the submission, the Council stated:

> . . . The Council notes that when the parties to a dispute reach agreement as to the issue to be presented to an arbitrator and thereafter undertake to formulate that issue in a submission agreement, it is important that the agreement define precisely the issues involved. Moreover, it is to be noted that even when the parties have entered

> into a submission agreement, the Council, in accordance with private sector precedent, will construe an agreement broadly with all doubts resolved in favor of the arbitrator when a question is presented to the Council as to whether an arbitrator exceeded his authority in a particular manner. . . . [Emphasis in original.][30/]

The Council has on numerous occasions rejected appeals alleging, without presenting supporting facts and circumstances, that the arbitrator exceeded his authority. For example, where an agency's exception alleged that "the arbitrator, by deciding that the agency's action constituted a reorganization, assertedly raised and decided an issue not submitted to arbitration, and thereby exceeded his authority," the Council said, in rejecting the appeal, "it appears that the arbitrator clearly carried out his authority to interpret the collective bargaining agreement between the parties and, indeed, the agency's own brief to the arbitrator indicated that the basic issue for him to arbitrate was whether its actions constituted a reorganization or reassignments."[31/] In another case, when the agency contended that "the arbitrator exceeded the scope of his authority by directing that electroplaters receive 'low degree' environmental differential payments, because the specific issue submitted to him was whether or not electroplaters are entitled to receive 'high degree' payments," the Council denied review of the award, noting that "the parties appear on the basis of the entire record to have intended to resolve the dispute which had arisen as to whether electroplaters are entitled to environmental differential payments," and pointing out that "the issue submitted to arbitration did not specifically deny the arbitrator the authority to determine whether something less than 'high degree' differential payments would be appropriate." [Footnote omitted.][32/]

In yet another case, a union asserted "that the arbitrator went beyond the limits of the issue submitted by the parties, concerning the grievant's alleged absence from the jobsite, by finding the grievant responsible for failing to clock out properly, an issue which the facility had allegedly never considered as the basis for disciplinary action in this case." The Council denied review, finding that "there is no question that the arbitrator answered the question at issue. . . . [T]he arbitrator was not without a reasonable basis from which he could conclude that the grievant's failure to clock out was an issue which necessarily arose from the particular question submitted, and was, therefore, within the scope of his authority in resolving that question and in fashioning the remedy accordingly." Hence, the Council concluded that the petition did not present facts and circumstances necessary to support the assertion that the arbitrator exceeded the scope of his authority by determining an issue not included in the question submitted to arbitration.[33/]

2. The Award Does Not Draw Its Essence from the Collective Bargaining Agreement

The Council will grant a petition for review of an arbitration award where it appears, based upon the facts and circumstances described in the

petition, that the exceptions to the award present the ground that the award does not draw its essence from the collective bargaining agreement. In the one case in which a petition was accepted on this ground, the Council concluded that the arbitrator's award drew its essence from the negotiated agreement. In reaching this conclusion, the Council said, in applying principles which had been used by Federal courts in the private sector:

> . . . We cannot say from the record before us that the arbitrator's award, based upon his interpretation and application of this particular provision of the parties' agreement, "is so palpably faulty that no judge, or group of judges, could ever conceivably have made such a ruling" or could not "in any rational way be derived from the agreement" or evidences "a manifest disregard of the agreement" or on its face represents an implausible interpretation thereof. . . .[34/]

The Council has denied review in several cases where a party has alleged that the award does not draw its essence from the negotiated agreement. The denial has been based on the finding by the Council that the petition did not describe facts and circumstances to support the ground alleged or because the party was, in substance, contending that the arbitrator reached an incorrect result in his interpretation of the agreement.[35/] The Council has consistently held, as have the courts with respect to arbitration in the private sector, that the interpretation of contract provisions is a matter to be left to the arbitrator's judgment and, hence, the Council has held that "a challenge to the arbitrator's interpretation of the agreement does not assert a ground . . . ."[36/]

Similarly, the Council has held that "[i]t is the award rather than the conclusion or the specific reasoning that is subject to challenge . . . ."[37/] Thus, where an arbitrator is empowered to interpret the terms of an agreement, the Council will not accept an appeal of an arbitrator's award merely because the Council's own interpretation of the agreement may be different.[38/] Accordingly, an arbitrator is not required to discuss the specific agreement provision involved in the grievance and the fact that he does not mention the provision in his award does not establish a basis for review.[39/]

Although the interpretation of contract provisions and, hence, the resolution of the grievance are matters to be left to the arbitrator's judgment,[40/] the Council has emphasized, consistent with its practice as well as the practice of courts in the private sector, that:

> . . . This does not mean, of course, that an arbitrator's interpretation of an agreement provision need not be consistent with applicable law, appropriate regulation or the Order. For where it appears, based upon the facts and circumstances described in a petition that there is support for a contention that an arbitrator has interpreted an agreement provision in a manner which results in the award violating applicable law, appropriate regulation or the Order, the Council, under its rules, will grant review of the award. . . .[41/]

3. The Award is Incomplete, Ambiguous or Contradictory So As to Make Implementation of the Award Impossible

The Council has held, consistent with the practice of courts in the private sector, that "an exception to an arbitration award which contends that the award is incomplete, ambiguous or contradictory so as to make implementation of the award impossible" is a ground for review of the award. In the particular case before the Council in which this was recognized as a ground, the Council noted that the "agency's exception does not contend that implementation of the award in the present case is impossible"; thus, the Council found that the exception was not supported by facts and circumstances described in the petition as required by the Council's rules.[42/]

4. The Award is Based on a Nonfact

The Council, consistent with the practice of courts in the private sector, will accept an appeal of an arbitration award where it appears, based upon the facts and circumstances described in the petition for review, that the exception to the award presents the ground that the award is based on a "nonfact," that is, the central fact underlying the award is concededly erroneous, and in effect is a gross mistake of fact but for which a different result would have been reached. However, none has yet presented facts and circumstances necessary to support an assertion that the arbitrator based his award on a nonfact but for which a different result would have been reached.[43/]

On the other hand, the Council has pointed out that the law is well settled that an arbitrator's findings as to the facts are not reviewable. Therefore, an exception which contends that the arbitrator's findings of fact are erroneous or are not supported by a preponderance of the evidence does not set forth a ground similar to those upon which challenges to arbitration awards are sustained by courts in private sector cases.[44/] Likewise, an exception which contends that an arbitrator applied erroneous standards with respect to the burden and measure of proof does not assert a ground for review.[45/]

5. The Arbitrator was Biased or Partial

The Council also has recognized as a ground, consistent with the practice of courts in the private sector, the contention that an arbitrator was biased or partial, but no case has yet presented facts and circumstances to support this ground. In one case, the Council noted that:

> . . . While courts sustain challenges to labor arbitration awards on the ground that arbitrators failed, prior to selection, to disclose to the parties relationships or dealings that might create an impression of possible bias, it is clear from the union's petition in this case that the information furnished on the [Federal Mediation and Conciliation Service] fact sheet was adequate to put

> the union on notice that the arbitrator had a significant relationship to the [agency involved]. . . . [T]he union waived its objection to the relationship in this case by withholding any protest until after the arbitrator issued his award. [Emphasis in original.][46/]

In another case, the Council noted that while courts sustain challenges to arbitration awards in the private sector on the grounds of bias or prejudice, the fact that an arbitrator conducted a hearing in a way which one side or the other did not like did not establish bias. The Council has acknowledged that it is the arbitrator's responsibility to control the conduct of the hearing.[47/]

6. The Arbitrator Refused to Hear Pertinent and Material Evidence

The Council has recognized that a refusal of an arbitrator to hear evidence pertinent and material to the controversy before him is a ground upon which courts in the private sector will sustain challenges to arbitration awards. Therefore, the Council will grant a petition for review of an arbitration award, where it appears, based upon the facts and circumstances described in the petition, that the exceptions to the award present the ground that the arbitrator refused to hear evidence pertinent and material to the controversy before him and, hence, denied a party a fair hearing. None of the cases which have alleged this ground to date has presented facts and circumstances in support of it.[48/]

On the other hand, an exception which asserts that the arbitrator tended to confine the scope of the hearing to the substance of the grievance he was commissioned to resolve and refused to consider an issue in a grievance which was not before him does not state a ground for review. Whether a single arbitrator will consider more than one grievance is a procedural question to be left to his final disposition.[49/]

III. CONCLUSION

In summary, the Council will grant a petition for review of an arbitrator's award where it appears, based on the facts and circumstances described in the petition, that it presents grounds that the award violates applicable law, appropriate regulation, or the Order, or other grounds similar to those upon which challenges to arbitration awards are sustained by courts in the private sector. The Council has identified, on a case-by-case basis, several grounds upon which challenges to arbitration awards are sustained by courts in the private sector. These include: the arbitrator exceeded his authority; the award does not draw its essence from the collective bargaining agreement; the award is incomplete, ambiguous or contradictory so as to make implementation impossible; the award is based on a nonfact; the arbitrator was biased or partial; and the arbitrator refused to hear pertinent and material evidence. Undoubtedly, there are other grounds upon which challenges to arbitration awards are sustained by courts in the private sector. Future cases will establish whether they are grounds in the Federal sector.

Nevertheless, the grounds in the private sector are limited; likewise, the grounds in the Federal sector are limited. The Council, like the courts, is loath to interfere in the arbitral process. As the Council has said:

> The parties to this case have adopted arbitration as the final stage of a negotiated procedure for resolving grievances over the interpretation of their agreement. That one of the parties may subsequently disagree with the interpretation reached by the arbitrator is beside the point; it is the arbitrator's interpretation of the agreement, and no one else's, for which the parties have bargained and by which they have agreed to be bound. And so long as it appears, as here, that the parties have obtained substantially that which they bargained for, the Council, consistent with the clear practice followed by the courts in reviewing private sector arbitration awards, will not interfere with the arbitrator's award solely because our own interpretation of the agreement might have been different. As the Fifth Circuit has put it so well: "The arbiter was chosen to be the Judge. That Judge has spoken. There it ends." [Footnote omitted.][50/]

Henry B. Frazier III
Executive Director

Attachments:
1. Footnotes
2. Selected Cases In Which The Recognized Grounds Are Discussed

FOOTNOTES

1/ Labor-Management Relations in the Federal Service (1975), at 43-44; see Department of the Air Force, Scott Air Force Base and National Association of Government Employees, Local R7-27 (Harrison, Arbitrator), FLRC No. 75A-101 (January 30, 1976), Report No. 96.

2/ Labor-Management Relations in the Federal Service (1975), at 74.

3/ It is noted that the Council's rules do not require the parties to file merits briefs and that the parties may, if they wish, rely on the petition or opposition filed at the acceptance stage.

4/ E.g., United Steelworkers of America v. United States Gypsum Co., 492 F.2d 713 (5th Cir. 1974); Associated Milk Dealers, Inc. v. Milk Drivers Union, Local 753, 422 F.2d 546 (7th Cir. 1970); Electrical Workers Local 453 v. Otis Elevator Co., 314 F.2d 25 (2d Cir. 1963), cert. denied, 373 U.S. 949 (1963); Glendale Mfg. Co. v. Local 520, ILGWU, 283 F.2d 936 (4th Cir. 1960), cert. denied, 366 U.S. 950 (1961); Local 985, UAW v. W. M. Chace Co., 262 F. Supp. 114 (E.D. Mich. 1966); Puerto Rico District Council of Carpenters v. Ebanisteria Quintana, 56 L.R.R.M. 2391 (D. Puerto Rico 1964); Minkoff v. Scranton Frocks, Inc., 181 F. Supp. 542 (S.D.N.Y. 1960), aff'd, 279 F.2d 115 (2d Cir. 1960); Dunau, "Judicial Review of Labor Arbitration Awards," N.Y.U. Conference on Labor 175 (1971).

5/ Council practice from 1970 through 1975 reveals that 92 appeals from arbitration awards were filed. As of April 1, 1976, the Council had acted on 88 of these appeals, accepting 28 (32 percent) and rejecting 51 (58 percent). (Nine appeals (10 percent) were withdrawn, which figure includes three appeals withdrawn after Council acceptance.) Of those accepted, 21 (75 percent) were accepted only on the grounds that the award violates applicable law, appropriate regulation, or the Order; 4 (14 percent) were accepted on other grounds similar to those applied by courts in the private sector; and 3 (11 percent) were accepted both on the grounds that the award violates applicable law, appropriate regulation, or the Order and on other grounds similar to those applied by courts in the private sector.

It should be noted that of the 21 appeals accepted only on grounds that the award violates applicable law, appropriate regulation, or the Order, 7 (33 percent) involved exceptions to the award on the basis that it violated the Back Pay Act of 1966 (5 U.S.C. § 5596) and applicable Comptroller General decisions. With the issuance of the Comptroller General's decisions in 54 Comp. Gen. 312 (1974) and subsequent related cases in which he has outlined the circumstances under which an arbitrator's award of backpay may be implemented under the Back Pay Act, it is expected that the number of arbitration awards appealed to the Council on this basis will be greatly reduced.

6/ Section 12 of the Order provides in pertinent part:

> Sec. 12. Basic provisions of agreements. Each agreement between an agency and a labor organization is subject to the following requirements--
>
> (a) in the administration of all matters covered by the agreement, officials and employees are governed by existing or future laws and the regulations of appropriate authorities, including policies set forth in the Federal Personnel Manual; by published agency policies and regulations in existence at the time the agreement was approved; and by subsequently published agency policies and regulations required by law or by the regulations of appropriate authorities, or authorized by the terms of a controlling agreement at a higher agency level . . . .

7/ Labor-Management Relations in the Federal Service (1975), at 44; accord, Bureau of Prisons and Federal Prison Industries, Inc., Washington, DC and Council of Prison Locals, AFGE, 73 FSIP 27, FLRC No. 74A-24 (June 10, 1975), Report No. 74.

8/ Department of the Air Force, Scott Air Force Base and National Association of Government Employees, Local R7-27 (Harrison, Arbitrator), FLRC No. 75A-101 (January 30, 1976), Report No. 96.

9/ Labor-Management Relations in the Federal Service (1975), at 44.

10/ National Archives and Records Service and American Federation of Government Employees, Local 2578 (Strongin, Arbitrator), FLRC No. 75A-74 (October 10, 1975), Report No. 87; Pearl Harbor Naval Shipyard, Hawaii, and Honolulu, Hawaii, Metal Trades Council, AFL-CIO (Tinning, Arbitrator), FLRC No. 72A-22 (January 24, 1973), Report No. 33.

11/ Veterans Administration Center, Temple, Texas and American Federation of Government Employees, Local 2109 (Jenkins, Arbitrator), FLRC No. 74A-61 (February 13, 1976), Report No. 99; Social Security Administration and American Federation of Government Employees, AFL-CIO, SSA Local 1923 (Strongin, Arbitrator), FLRC No. 74A-51 (November 18, 1975), Report No. 91; Community Services Administration and American Federation of Government Employees, Local Union No. 2649 (Rohman, Arbitrator), FLRC No. 74A-29 (November 18, 1975), Report No. 91; Naval Ordnance Station, Louisville, Kentucky and Local Lodge No. 830, International Association of Machinists and Aerospace Workers (Thomson, Arbitrator), FLRC No. 75A-91 (November 6, 1975), Report No. 89; General Services Administration, Region 3 and American Federation of Government Employees, Local 2456, AFL-CIO (Lippman, Arbitrator), FLRC No. 74A-58 (February 20, 1975), Report No. 64; Small Business Administration and American Federation of Government Employees, Local 2532 (Kleeb, Arbitrator), FLRC No. 73A-44 (November 6, 1974), Report No. 60; American Federation of Government Employees, Local 2449 and Headquarters, Defense Supply Agency and DSA Field Activities, Cameron Station, Alexandria, Virginia (Jaffee, Arbitrator), FLRC No. 73A-51 (September 24, 1974), Report No. 57.

12/ Mare Island Naval Shipyard and Mare Island Navy Yard Metal Trades Council, AFL-CIO (Durham, Arbitrator), FLRC No. 74A-64 (March 3, 1976), Report No. 100; Professional Air Traffic Controllers Organization and Federal Aviation Administration, Portland, Maine, Air Traffic Control Tower (Gregory, Arbitrator), FLRC No. 74A-15 (November 7, 1975), Report No. 89; Naval Rework Facility, Naval Air Station, Jacksonville, Florida, and National Association of Government Employees, Local R5-82 (Goodman, Arbitrator), FLRC No. 73A-46 (October 8, 1975), Report No. 86.

13/ Office of Economic Opportunity and American Federation of Government Employees, Local 2677 (Doherty, Arbitrator), FLRC No. 75A-23 (December 31, 1975), Report No. 95.

14/ In a 1975 report issued by the Comptroller General of the United States (B-180021, March 20, 1975, letter to the Honorable David N. Henderson, Chairman, Committee on Post Office and Civil Service, House of Representatives), he points out that since the latter part of 1974 the General Accounting Office has issued a number of decisions which have broadened the applicability of the Back Pay Act of 1966, the basic statutory authority for recompensing Federal employees who are found to have been wrongfully deprived of pay, allowances or differentials. Especially significant in this regard is the determination that the Act is applicable as a basis for making employees whole in situations where an arbitrator determines that, as the direct result of a violation of a collective bargaining agreement, an employee has been deprived of pay, allowances or differentials he would otherwise have received. The report indicates that this broadened applicability of the Act is encompassed in amended regulations to the Back Pay Act which have been proposed by the Civil Service Commission.

A second report, dealing specifically with the remedial portion of arbitrators' awards, was issued by the Comptroller General in October 1975 (Grievance Arbitration Awards Made Under the Federal Labor Relations Program, FPCD-76-14, October 17, 1975). The basis for the report was an analysis of 509 grievance arbitration cases decided in the Federal sector and its primary focus was on awards made in 175 of the cases in which arbitrators fashioned remedies granting some form of monetary relief. According to the report, of these 175 awards, 18 were not accommodated by statute.

15/ Mare Island Naval Shipyard and Mare Island Navy Yard Metal Trades Council, AFL-CIO (Durham, Arbitrator), FLRC No. 74A-64 (March 3, 1976), Report No. 100.

16/ Indiana Army Ammunition Plant, Charlestown, Indiana and National Federation of Federal Employees Local 1581 (Render, Arbitrator), FLRC No. 75A-84 (November 28, 1975), Report No. 92; Airway Facilities Division, Federal Aviation Administration, Eastern Region and National Association of Government Employees, Local R2-10R (Kronish, Arbitrator), FLRC No. 75A-50 (August 15, 1975), Report No. 82.

17/ Federal Aviation Administration, Department of Transportation, Fort Worth Air Route Traffic Control Center and Professional Air Traffic Controllers Organization (Jenkins, Arbitrator), FLRC No. 75A-31 (December 31, 1975), Report No. 95; Tooele Army Depot, Tooele, Utah, and American Federation of Government Employees, AFL-CIO, Local 2185 (Linn, Arbitrator), FLRC No. 75A-104 (December 19, 1975), Report No. 93; Social Security Administration and American Federation of Government Employees, AFL-CIO, SSA Local 1923 (Strongin, Arbitrator), FLRC No. 74A-51 (November 18, 1975), Report No. 91; Community Services Administration and American Federation of Government Employees, Local Union No. 2649 (Rohman, Arbitrator), FLRC No. 74A-29 (November 18, 1975), Report No. 91; Defense Commercial Communications Office and 1400 Air Base Wing, Scott Air Force Base, and National Association of Government Employees, Local Union No. R7-23 (Roberts, Arbitrator), FLRC No. 75A-87 (November 7, 1975), Report No. 89; Naval Ordnance Station, Louisville, Kentucky and Local Lodge No. 830, International Association of Machinists and Aerospace Workers (Thomson, Arbitrator), FLRC No. 75A-91 (November 6, 1975), Report No. 89; Office of Economic Opportunity and Local 2677, American Federation of Government Employees, AFL-CIO (Maggiolo, Arbitrator), FLRC No. 75A-26 (September 17, 1975), Report No. 83; Defense General Supply Center, Richmond, Virginia and American Federation of Government Employees, Local 2047, AFL-CIO (Di Stefano, Arbitrator), FLRC No. 74A-99 (May 22, 1975), Report No. 72; Small Business Administration and American Federation of Government Employees, Local 2532 (Kleeb, Arbitrator), FLRC No. 73A-44 (November 6, 1974), Report No. 60; American Federation of Government Employees, Local 2449 and Headquarters, Defense Supply Agency and DSA Field Activities, Cameron Station, Alexandria, Virginia (Jaffee, Arbitrator), FLRC No. 73A-51 (September 24, 1974), Report No. 57.

18/ Federal Aviation Administration, Department of Transportation and Professional Air Traffic Controllers Organization (Schedler, Arbitrator), FLRC No. 74A-88 (July 24, 1975), Report No. 78; accord, Federal Aviation Administration, Kansas City, Missouri and Professional Air Traffic Controllers Organization (Yarowsky, Arbitrator), FLRC No. 75A-54 (July 24, 1975), Report No. 78; Professional Air Traffic Controllers Organization and Federal Aviation Administration, Department of Transportation (Eigenbrod, Arbitrator), FLRC No. 75A-15 (July 24, 1975), Report No. 78; Federal Aviation Administration and Professional Air Traffic Controllers Organization (MEBA, AFL-CIO) (Hanlon, Arbitrator), FLRC No. 75A-9 (July 24, 1975), Report No. 78.

19/ American Federation of Government Employees, Local 2612 and Department of the Air Force, Headquarters 416th Combat Support Group (SAC), Griffiss Air Force Base (Gross, Arbitrator), FLRC No. 75A-45 (December 24, 1975), Report No. 94.

20/ Federal Aviation Administration, Department of Transportation, Fort Worth Air Route Traffic Control Center and Professional Air Traffic Controllers Organization (Jenkins, Arbitrator), FLRC No. 75A-31 (December 31, 1975), Report No. 95; Social Security Administration and American Federation of Government Employees, AFL-CIO, SSA Local 1923 (Strongin, Arbitrator), FLRC No. 74A-51 (November 18, 1975), Report No. 91; Community Services Administration

and American Federation of Government Employees, Local Union No. 2649 (Rohman, Arbitrator), FLRC No. 74A-29 (November 18, 1975), Report No. 91; Office of Economic Opportunity and Local 2677, American Federation of Government Employees, AFL-CIO (Maggiolo, Arbitrator), FLRC No. 75A-26 (September 17, 1975), Report No. 83; American Federation of Government Employees, Local 2449 and Headquarters, Defense Supply Agency and DSA Field Activities, Cameron Station, Alexandria, Virginia (Jaffee, Arbitrator), FLRC No. 73A-51 (September 24, 1974), Report No. 57.

21/ Veterans Administration Center, Temple, Texas and American Federation of Government Employees, Local 2109 (Jenkins, Arbitrator), FLRC No. 74A-61 (February 13, 1976), Report No. 99; Tooele Army Depot, Tooele, Utah, and American Federation of Government Employees, AFL-CIO, Local 2185 (Linn, Arbitrator), FLRC No. 75A-104 (December 19, 1975), Report No. 93; Defense Commercial Communications Office and 1400 Air Base Wing, Scott Air Force Base, and National Association of Government Employees, Local Union No. R7-23 (Roberts, Arbitrator), FLRC No. 75A-87 (November 7, 1975), Report No. 89; National Council of OEO Locals, AFGE, AFL-CIO, and Office of Economic Opportunity (Harkless, Arbitrator), FLRC No. 73A-67 (December 6, 1974), Report No. 61; Veterans Administration Hospital, Canandaigua, New York and Local 227, Service Employees International Union, Buffalo, New York (Miller, Arbitrator), FLRC No. 73A-42 (July 31, 1974), Report No. 55.

22/ Department of the Air Force, Scott Air Force Base and National Association of Government Employees, Local R7-27 (Harrison, Arbitrator), FLRC No. 75A-101 (January 30, 1976), Report No. 96.

23/ Indiana Army Ammunition Plant, Charlestown, Indiana and National Federation of Federal Employees Local 1581 (Render, Arbitrator), FLRC No. 75A-84 (November 28, 1975), Report No. 92; Norfolk Naval Shipyard and Tidewater Virginia Federal Employees Metal Trades Council, AFL-CIO (Strongin, Arbitrator), FLRC No. 74A-85 (August 14, 1975), Report No. 81; Office of Economic Opportunity and American Federation of Government Employees Local 2677 (Matthews, Arbitrator), FLRC No. 74A-76 (June 26, 1975), Report No. 76.

24/ Veterans Administration Hospital, Canandaigua, New York and Local 227, Service Employees International Union, Buffalo, New York (Miller, Arbitrator), FLRC No. 73A-42 (July 31, 1974), Report No. 55.

25/ National Council of OEO Locals, AFGE, AFL-CIO, and Office of Economic Opportunity (Harkless, Arbitrator), FLRC No. 73A-67 (December 6, 1974), Report No. 61.

26/ Pacific Southwest Forest and Range Experiment Station, Forest Service, Department of Agriculture and American Federation of Government Employees, Local 3217 (Myers, Arbitrator), FLRC No. 75A-4 (March 18, 1976), Report No.101; Small Business Administration and American Federation of Government Employees, Local 2532 (Kleeb, Arbitrator), FLRC No. 73A-44 (November 6, 1974), Report No. 60; American Federation of Government Employees, Local 12

(AFGE) and U.S. Department of Labor (Jaffee, Arbitrator), FLRC No. 72A-3 (July 31, 1973), Report No. 42.

27/ American Federation of Government Employees, Local 12 (AFGE) and U.S. Department of Labor (Jaffee, Arbitrator), FLRC No. 72A-3 (July 31, 1973), Report No. 42.

28/ Long Beach Naval Shipyard and Federal Employees Metal Trades Council (Steese, Arbitrator), FLRC No. 74A-40 (January 15, 1975), Report No. 62; Small Business Administration and American Federation of Government Employees, Local 2532 (Kleeb, Arbitrator), FLRC No. 73A-44 (November 6, 1974), Report No. 60; American Federation of Government Employees, Local 12 (AFGE) and U.S. Department of Labor (Jaffee, Arbitrator), FLRC No. 72A-3 (July 31, 1973), Report No. 42.

29/ Pacific Southwest Forest and Range Experiment Station, Forest Service, Department of Agriculture and American Federation of Government Employees, Local 3217 (Myers, Arbitrator), FLRC No. 75A-4 (March 18, 1976), Report No. 101.

30/ Id. at 8 of the Decision.

31/ American Federation of Government Employees, Local 2532 and Small Business Administration (Dorsey, Arbitrator), FLRC No. 73A-4 (April 18, 1973), Report No. 36.

32/ Naval Air Rework Facility, Pensacola, Florida and American Federation of Government Employees, Lodge No. 1960 (Goodman, Arbitrator), FLRC No. 74A-12 (September 9, 1974), Report No. 56.

33/ Long Beach Naval Shipyard and Federal Employees Metal Trades Council (Steese, Arbitrator), FLRC No. 74A-40 (January 15, 1975), Report No. 62.

34/ NAGE Local R8-14 and Federal Aviation Administration, Oklahoma City, Oklahoma (Stratton, Arbitrator), FLRC No. 74A-38 (July 30, 1975), Report No. 79.

35/ Frances N. Kenny and National Weather Service (Lubow, Arbitrator), FLRC No. 75A-30 (November 14, 1975), Report No. 89; Internal Revenue Service (Ogden Service Center) and National Association of Internal Revenue Service Employees, Chapter 67 (Gorsuch, Arbitrator), FLRC No. 75A-56 (October 3, 1975), Report No. 85; Social Security Administration, Bureau of Retirement and Survivors Insurance, Chicago, Illinois and AFGE, National Council of Social Security Payment Center Locals, Local 1395 (Davis, Arbitrator), FLRC No. 75A-17 (June 26, 1975), Report No. 76; Picatinny Arsenal, Dept. of the Army, and Local 225, American Federation of Government Employees (Falcone, Arbitrator), FLRC No. 72A-44 (May 2, 1973), Report No. 37.

36/ American Federation of Government Employees, Local 12 and U.S. Department of Labor (Daly, Arbitrator), FLRC No. 72A-55 (September 17, 1973), Report No. 44. See also, Labor Local 12, AFGE (AFL-CIO) and U.S. Department of Labor (Mallet-Prevost, Arbitrator), FLRC No. 75A-36 (September 9, 1975), Report No. 82; Airway Facilities Division, Federal Aviation Administration, Eastern Region and National Association of Government Employees, Local R2-10R (Kronish, Arbitrator), FLRC No. 75A-50 (August 15, 1975), Report No. 82; Norfolk Naval Shipyard and Tidewater Virginia Federal Employees Metal Trades Council, AFL-CIO (Strongin, Arbitrator), FLRC No. 74A-85 (August 14, 1975), Report No. 81; American Federation of Government Employees, AFL-CIO, Local 2649 and Office of Economic Opportunity (Sisk, Arbitrator), FLRC No. 74A-17 (December 5, 1974), Report No. 61.

37/ NAGE Local R8-14 and Federal Aviation Administration, Oklahoma City, Oklahoma (Stratton, Arbitrator), FLRC No. 74A-38 (July 30, 1975), Report No. 79.

38/ Community Services Administration and National Council of CSA Locals (American Federation of Government Employees) (Edgett, Arbitrator), FLRC No. 75A-48 (August 15, 1975), Report No. 81.

39/ Frances N. Kenny and National Weather Service (Lubow, Arbitrator), FLRC No. 75A-30 (November 14, 1975), Report No. 89; Social Security Administration, Bureau of Retirement and Survivors Insurance, Chicago, Illinois and AFGE, National Council of Social Security Payment Center Locals, Local 1395 (Davis, Arbitrator), FLRC No. 75A-17 (June 26, 1975), Report No. 76; Office of Economic Opportunity and American Federation of Government Employees Local 2677 (Matthews, Arbitrator), FLRC No. 74A-76 (June 26, 1975), Report No. 76; Small Business Administration and American Federation of Government Employees, Local 2532 (Kleeb, Arbitrator), FLRC No. 73A-44 (November 6, 1974), Report No. 60.

40/ The Supervisor, New Orleans, Louisiana Commodity Inspection and Grain Inspection Branches, Grain Division, United States Department of Agriculture and American Federation of Government Employees, AFL-CIO, Local 3157 (Moore, Arbitrator), FLRC No. 74A-75 (June 26, 1975), Report No. 74.

41/ Professional Air Traffic Controllers Organization and Federal Aviation Administration, Department of Transportation (Britton, Arbitrator), FLRC No. 74A-1 (June 21, 1974), Report No. 53.

42/ National Weather Service, N.O.A.A., U.S. Department of Commerce and National Association of Government Employees (Strongin, Arbitrator), FLRC No. 75A-63 (August 15, 1975), Report No. 82.

43/ Office of Economic Opportunity, Kansas City Regional Office, Region VII and National Council of OEO Locals, Local 2691, AFL-CIO (Yarowsky, Arbitrator), FLRC No. 74A-102 (August 15, 1975), Report No. 81.

44/ Community Services Administration and American Federation of Government Employees, Local 2677 (Edgett, Arbitrator), FLRC No. 75A-102 (January 30, 1976), Report No. 96; Norfolk Naval Shipyard and Tidewater Virginia Federal Employees Metal Trades Council, AFL-CIO (Strongin, Arbitrator), FLRC No. 74A-85 (August 14, 1975), Report No. 81; Local 1164, American Federation of Government Employees, AFL-CIO and Bureau of District Office Operations, Boston Region, Social Security Administration (Santer, Arbitrator), FLRC No. 74A-49 (December 20, 1974), Report No. 61; Federal Employees Metal Trades Council, Vallejo, California and Mare Island Naval Shipyard, Vallejo, California (Hughes, Arbitrator), FLRC No. 73A-20 (September 17, 1973), Report No. 44.

45/ Federal Employees Metal Trades Council, Vallejo, California and Mare Island Naval Shipyard, Vallejo, California (Hughes, Arbitrator), FLRC No. 73A-20 (September 17, 1973), Report No. 44.

46/ Mare Island Naval Shipyard, Vallejo, Calif. and Federal Employees Metal Trades Council, AFL-CIO (Childs, Arbitrator), FLRC No. 72A-13 (April 17, 1973), Report No. 36.

47/ Federal Employees Metal Trades Council, Vallejo, California and Mare Island Naval Shipyard, Vallejo, California (Hughes, Arbitrator), FLRC No. 73A-20 (September 17, 1973), Report No. 44.

48/ American Federation of Government Employees, AFL-CIO, Local 2677 and Community Services Administration (Lundquist, Arbitrator), FLRC No. 75A-105 (January 30, 1976), Report No. 96; Community Services Administration and American Federation of Government Employees (AFL-CIO), Local 2677 (Dorsey, Arbitrator), FLRC No. 75A-71 (November 18, 1975), Report No. 92; Office of Economic Opportunity, Kansas City Regional Office, Region VII and National Council of OEO Locals, Local 2691, AFL-CIO (Yarowsky, Arbitrator), FLRC No. 74A-102 (August 15, 1975), Report No. 81; see also, Frances N. Kenny and National Weather Service (Lubow, Arbitrator), FLRC No. 75A-30 (November 14, 1975), Report No. 89.

49/ Local 1164, American Federation of Government Employees, AFL-CIO and Bureau of District Office Operations, Boston Region, Social Security Administration (Santer, Arbitrator), FLRC No. 74A-49 (December 20, 1974), Report No. 61.

50/ NAGE Local R8-14 and Federal Aviation Administration, Oklahoma City, Oklahoma (Stratton, Arbitrator), FLRC No. 74A-38 (July 30, 1975), Report No. 79.

SELECTED CASES IN WHICH THE RECOGNIZED GROUNDS ARE DISCUSSED:*/

Ground: The Award Violates Applicable Law

74A-64 (100), 74A-61 (99), 75A-23 (95), 74A-51 (91), 74A-29 (91), 74A-15 (89), 75A-74 (87), 73A-46 (86), 73A-44 (60), 73A-51 (57), 72A-22 (33)

Ground: The Award Violates Appropriate Regulation

75A-31 (95), 75A-45 (94), 75A-84 (92), 74A-51 (91), 74A-29 (91), 75A-26 (83), 75A-50 (82), 73A-44 (60), 73A-51 (57)

Ground: The Award Violates the Order

75A-101 (96), 74A-85 (81), 73A-67 (61), 73A-42 (55)

Ground: The Arbitrator Exceeded His Authority

75A-4 (101), 74A-40 (62), 73A-44 (60), 74A-12 (56), 72A-3 (42)

Ground: The Award Does Not Draw Its Essence from the Collective Bargaining Agreement

75A-30 (89), 75A-56 (85), 74A-38 (79), 75A-17 (76), 72A-44 (37)

Ground: The Award Is Incomplete, Ambiguous or Contradictory So As to Make Implementation of the Award Impossible

75A-63 (82)

Ground: The Award is Based on a Nonfact

74A-102 (81)

Ground: The Arbitrator was Biased or Partial

73A-20 (44), 72A-13 (36)

Ground: The Arbitrator Refused to Hear Pertinent and Material Evidence

75A-105 (96), 75A-71 (92), 75A-30 (89), 74A-102 (81)

*/ The first number refers to the FLRC case number. The number in parentheses is the Report of Case Decisions in which the decision letter denying review or the decision on the merits appears.

UNITED STATES

FEDERAL LABOR RELATIONS COUNCIL

1900 E. STREET, N.W. WASHINGTON, D.C. 20415

INFORMATION ANNOUNCEMENT December 28, 1977

The President issued E.O. 12027 on December 5, 1977, which implements the decision announced in Reorganization Plan No. 1 to transfer certain executive development and related personnel functions from the Director of the Office of Management and Budget to the United States Civil Service Commission. Among other things, E.O. 12027 further amends section 25(a) of E.O. 11491, as amended, to read as follows:

> The Civil Service Commission, in conjunction with the Director of the Office of Management and Budget, shall establish and maintain a program for the policy guidance of agencies on labor-management relations in the Federal service and shall periodically review the implementation of these policies. The Civil Service Commission shall be responsible for the day-to-day policy guidance under that program. The Civil Service Commission also shall continuously review the operation of the Federal labor-management relations program to assist in assuring adherence to its provisions and merit system requirements; implement technical advice and information programs for the agencies; assist in the development of programs for training agency personnel and management officials in labor-management relations; and, from time to time, report to the Council on the state of the program with any recommendations for its improvement.

A copy of E.O. 12027 is attached for your information.

Attachment

[3195–01]

Executive Order 12027 December 5, 1977

Relating to the Transfer of Certain Executive Development and Other Personnel Functions

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including Reorganization Plan No. 2 of 1970 (5 U.S.C. App. II), Section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c), and Section 301 of Title 3 of the United States Code, and as President of the United States of America, in order to transfer certain functions from the Director of the Office of Management and Budget to the United States Civil Service Commission, it is hereby ordered as follows:

SECTION 1. The following functions which heretofore have been performed by the Director of the Office of Management and Budget, either alone or in conjunction with the United States Civil Service Commission, are hereby reassigned and delegated to the United States Civil Service Commission:

(a) Providing overall Executive Branch leadership, regulation, and guidance in executive personnel selection, development, and management including:

(1) Devising and establishing programs and encouraging agencies to devise and establish programs to forecast the need for career executive talent and to select, train, develop, motivate, deploy and evaluate the men and women who make up the top ranks of Federal civil service;

(2) Initiating and leading efforts to ensure that potential executive talent is identified, developed and well utilized throughout the Executive Branch and;

(3) Ensuring that executive training and motivation meet current and future needs.

(b) Studying and reporting on issues relating to position classification and the compensation of Federal civilian employees, including linkages among pay systems, and providing reports on average grade levels, work-years and personnel costs of Federal civilian employees.

(c) Providing primary Executive Branch leadership in (1) developing and reviewing a program of policy guidance to departments and agencies for the organization of management's responsibility under the Federal Labor Relations program; and (2) monitoring issues and trends in labor management relations for referral to appropriate Executive Branch officials including the Federal Labor Relations Council.

SEC. 2. Section 1 of Executive Order No. 11541, as amended, is further amended by adding thereto the following new subsection:

"(d) The delegation to the Director of the Office of Management and Budget of the following executive development and personnel functions (which have been transferred to the Civil Service Commission) is terminated on December 4, 1977:

(1) Providing overall Executive Branch leadership, regulation, and guidance in executive personnel selection, development and management.

(2) Studying and reporting on issues relating to position classification and the compensation of Federal civilian employees, including linkages among pay systems, and providing reports on average grade levels, work-years and personnel costs of Federal civilian employees.

(3) Providing primary Executive Branch leadership in (i) developing and reviewing a program of policy guidance to departments and agencies for the organization of management responsibility under the Federal Labor Relations program; and (ii) monitoring issues and trends in labor management relations for referral to appropriate Executive Branch officials including the Federal Labor Relations Council.".

SEC. 3. Executive Order No. 11491, as amended, is further amended by amending Section 25(a) to read as follows:

"The Civil Service Commission, in conjunction with the Director of the Office of Management and Budget, shall establish and maintain a program for the policy guidance of agencies on labor-management relations in the Federal service and shall periodically review the implementation of these policies. The Civil Service Commission shall be responsible for the day-to-day policy guidance under that program. The Civil Service Commission also shall continuously review the operation of the Federal labor-management relations program to assist in assuring adherence to its provisions and merit system requirements; implement technical advice and information programs for the agencies; asssit in the development of programs for training agency personnel and management officials in labor-management relations; and, from time to time, report to the Council on the state of the program with any recommendations for its improvement.".

SEC. 4. Section 5(a) of Executive Order No. 11636 of December 17, 1971, establishing an Employee-Management Relations Commission as a committee of the Board of the Foreign Service, is amended by deleting: "The representative of the Office of Management and Budget shall be the Chairman of the Commission" and substituting therefor "The representative of the Civil Service Commission shall be the Chairman of the Commission".

SEC. 5. The records, property, personnel, and unexpended balances of appropriations, available or to be made available, which relate to the functions transferred or reassigned by this Order from the Office of Management and Budget to the United States Civil Service Commission, are hereby transferred to the United States Civil Service Commission.

SEC. 6. The Director of the Office of Management and Budget shall make such determinations, issue such orders, and take all actions necessary or appropriate to effectuate the transfers or reassignments provided by this Order, including the transfer of funds, records, property, and personnel.

SEC. 7. This Order shall be effective December 4, 1977.

THE WHITE HOUSE,
December 5, 1977.

[FR Doc.77-35132 Filed 12-5-77;3:59 pm]

UNITED STATES

FEDERAL LABOR RELATIONS COUNCIL

1900 E. STREET, N.W. WASHINGTON, D.C. 20415

FLRC No. 76P-4

Pursuant to section 4(b) of the Order and section 2410.3 of the Council's rules (5 CFR 2410.3), the Council provided the attached major policy statement on the implementation of the Court decision in National Treasury Employees Union v. Paul J. Fasser, Jr., et al., Civil Action No. 76-408 (D.D.C. 1976), appeal from which was withdrawn by the Government effective on January 4, 1977.

For the reasons and in the manner fully detailed in its statement, the Council determined, consistent with the decision of the Court, to accomplish the delineation of picketing which is permissible or nonpermissible under section 19(b)(4) of the Order on a case-by-case basis, utilizing the adjudicatory procedures established in sections 4(c)(1) and 6 of the Order. This policy will apply in all pending and future cases involving complaints that a labor organization unlawfully picketed an agency in a labor-management dispute, as proscribed by section 19(b)(4) of the Order.

Attachment

UNITED STATES
FEDERAL LABOR RELATIONS COUNCIL
WASHINGTON, D.C. 20415

FLRC No. 76P-4

STATEMENT ON MAJOR POLICY ISSUE

Pursuant to section 4(b) of the Order and section 2410.3 of the Council's rules of procedure (5 CFR 2410.3), the Council provides this major policy statement on the implementation of the decision rendered by the District Court in National Treasury Employees Union v. Paul J. Fasser, Jr., et al., Civil Action No. 76-408 (D.D.C. 1976), appeal from which was withdrawn by the Government effective on January 4, 1977.

In the subject case, the Court vacated the decision and order of the Assistant Secretary in A/SLMR No. 536, sustained by the Council in FLRC No. 75A-96 (Mar. 3, 1976), Report No. 97, in which the union was held to have violated section 19(b)(4) of the Order by its picketing of several Internal Revenue Service facilities in the course of a labor-management dispute with that agency.

While the Court determined that the application of section 19(b)(4) to the precise fact situation in the subject case contravened the First Amendment, the Court denied the union's request that the picketing ban in section 19(b)(4) be declared unconstitutional. Instead, the Court ruled, in the latter regard, that the Order "can constitutionally prohibit any picketing, whether or not peaceful and informational, that actually interferes or reasonably threatens to interfere with the operation of the affected Government agency." Further, the Court, after expressing the need for more facts and the application at least initially of expert judgment on the problem, suggested that the Council—either through rulemaking or otherwise—develop facts as to the precise Government interest to be protected and as to possible differentiations between types of picketing, based on such matters as the sensitivity of the particular governmental function involved, the location of the picketed facility, the number of pickets, and the purpose of the picketing.

Consistent with the decision of the Court, the Council has decided to accomplish the delineation of picketing which is permissible or nonpermissible under section 19(b)(4) on a case-by-case basis, utilizing the adjudicatory procedures established in sections 4(c)(1) and 6 of the Order. Clearly only when picketing of an agency by a labor organization in a labor-management dispute actually interferes or reasonably threatens to interfere with the operation of the affected Government agency will that picketing be found nonpermissible under section 19(b)(4). If picketing of an agency by a labor organization in a labor-management dispute does not actually interfere or reasonably threaten to interfere with the operation of the affected Government agency that picketing will be found permissible under section 19(b)(4). The Council has concluded that it is less

practicable to delineate through rulemaking the myriad circumstances in which such nonpermissible or permissible picketing might occur. Moreover, the development of facts as to the precise Government interest to be protected in given circumstances and as to possible differentiations between types of picketing can best be accomplished on a case-by-case basis through the adjudicatory procedures established under the Order. These procedures include provision for the presentation of arguments by amici curiae under section 2411.49 of the Council's rules.

More particularly as to the adjudicatory procedures, upon a complaint filed by an agency alleging that a labor organization unlawfully picketed the agency in a labor-management dispute, in violation of section 19(b)(4), the Assistant Secretary shall continue to process such complaint in accordance with the expedited procedures set forth in section 203.7(b) (29 CFR 203.7(b)) and related provisions of the Assistant Secretary's Rules and Regulations (including the procedure for the issuance of an order providing for cessation of the picketing pending disposition of the complaint). In such cases, the Assistant Secretary shall determine whether the picketing involved in the particular case interfered with or reasonably threatened to interfere with the operation of the affected Government agency and thereby violated section 19(b)(4) of the Order. In this connection, the Assistant Secretary shall fully develop in the record and carefully consider the precise Government interest sought to be protected and such matters as the sensitivity of the governmental function involved, the situs of the picketed operation, the number of pickets, the purpose of the picketing, the conduct of the pickets, and any other facts relevant to the exact nature of the picketing and the Government organization concerned. Based upon these detailed findings in each case, the Assistant Secretary shall render his decision as to whether the picketing was permissible or nonpermissible under section 19(b)(4) of the Order.

Thereafter, upon a petition for review of the decision of the Assistant Secretary duly filed by a party to the case and upon acceptance of that petition for review by the Council under part 2411, subpart B of the Council's rules of procedure (5 CFR 2411.11 et. seq.), the Council will carefully review the decision of the Assistant Secretary. As appropriate, the Council will carefully analyze the Assistant Secretary's determination and the required supporting findings by the Assistant Secretary referred to hereinabove relating to whether, under the particular circumstances of the case, the picketing interfered with or reasonably threatened to interfere with the operation of the Government agency involved, in violation of section 19(b)(4) of the Order. Requests of interested agencies, unions or other persons to submit their views on these matters, as amici curiae, will be entertained by the Council in accordance with section 2411.49 of the Council's rules (5 CFR 2411.49). Founded on this analysis, and in conformity with section 2411.18(b) of the Council's rules (5 CFR 2411.18(b)), the Council will issue its decision sustaining, modifying or setting aside the Assistant Secretary's ruling that the picketing at issue was permissible or nonpermissible under section 19(b)(4) of the Order.

In this manner, on a case-by-case basis and demonstrated by the facts in each case, the Council will effect the specific delineation of picketing

which is permissible or nonpermissible under section 19(b)(4) of the Order, as suggested by the Court in the National Treasury Employees Union decision. The decision of the Council rendered in each case will, of course, serve as a precedent which will be binding on the disposition of any like situation which may subsequently be presented.

The foregoing practice and considerations will apply in all pending and future cases involving complaints that a labor organization unlawfully picketed an agency in a labor-management dispute, as proscribed by section 19(b)(4) of the Order.

By the Council.

Henry B. Frazier III
Executive Director

Issued: January 5, 1977

UNITED STATES
FEDERAL LABOR RELATIONS COUNCIL
1900 E. STREET, N.W. WASHINGTON, D.C. 20415

INFORMATION ANNOUNCEMENT December 12, 1974

To Heads of Agencies and Presidents of Labor Organizations:

REEXAMINATION OF RULES OF PROCEDURE

The Council is currently undertaking an intensive reexamination of its rules and regulations pertaining to its review functions under E.O. 11491, as amended (5 CFR Part 2411). This study is designed to improve the Council's procedural requirements for the processing of appeals filed under section 4(c) of the Order, consistent with the rights of the parties and the purposes of the Order. (The reexamination concerns procedural matters other than those subject to the Council's general review of the Federal labor-management relations program, as set forth in the Council's Information Announcement of December 18, 1973.)

The Council would like the assistance of agencies and labor organizations in its preliminary consideration of needed changes in its rules and regulations. More particularly, the Council requests that agencies and labor organizations describe any problems which they have encountered under the current rules of procedure, and submit detailed recommendations as to how these problems may be effectively resolved, including suggested language to be incorporated in the amended rules.

For maximum assistance to the Council, your comments are desired as quickly as possible but no later than January 14, 1975. Your cooperation in this regard will be appreciated so that the Council can, following the completion of the general review of the program, revise its rules.

Consistent with its established practice, the Council will, as soon as practical after the receipt of your comments and the completion of the general review, publish a notice of proposed revisions of its rules and will invite interested persons to submit their views and suggestions on these specific provisions. Following consideration of such submissions by interested persons, the Council will publish amendments to its rules in final form, as adopted by the Council.

Henry B. Frazier III

Henry B. Frazier III
Executive Director

UNITED STATES
FEDERAL LABOR RELATIONS COUNCIL
1900 E. STREET, N.W. WASHINGTON, D.C. 20415

INFORMATION ANNOUNCEMENT February 2, 1976

The Tennessee Valley Authority has been expressly excluded from the coverage of E.O. 11491, as amended, by the issuance on January 30, 1976, of E.O. 11901 which adds the following new item to section 3(b):

"(6) the Tennessee Valley Authority."

This amendment was requested by the Tennessee Valley Authority, the Tennessee Valley Trades and Labor Council[1/] and the Salary Policy Employee Panel.[2/] In support of their request it was pointed out that TVA and

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1/ The Tennessee Valley Trades and Labor Council is the recognized representative of all TVA employees in the trades and labor classifications in any of the following labor organizations comprising the Council:

International Association of Heat and Frost Insulator and Asbestos Workers (AFL-CIO); International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers (AFL-CIO); Bricklayers, Masons and Plasterers International Union of America (AFL-CIO); United Brotherhood of Carpenters and Joiners of America (AFL-CIO); International Brotherhood of Electrical Workers (AFL-CIO); Laborers' International Union of North America (AFL-CIO); International Association of Bridge, Structural and Ornamental Iron Workers (AFL-CIO); Wood, Wire and Metal Lathers International Union (AFL-CIO); International Union of Operating Engineers (AFL-CIO); International Association of Machinists and Aerospace Workers (AFL-CIO); International Brotherhood of Painters and Allied Trades (AFL-CIO); Operative Plasterers' and Cement Masons' International Association (AFL-CIO); United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (AFL-CIO); United Slate, Tile and Composition Roofers, Damp and Waterproof Workers' Association (AFL-CIO); Sheet Metal Workers' International Association (AFL-CIO); and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

2/ The Salary Policy Employee Panel is the recognized representative of all salary employees of TVA in administrative, professional, engineering, scientific, aide, technician, clerical, reproduction, communications, custodial and public safety occupations. The Panel is composed of the following labor organizations:

(Continued)

the labor organizations representing TVA employees have developed a unique, successful and productive bilateral labor-management relations program suited to their particular needs and have experienced nearly four decades of effective collective bargaining under that program.

TVA is a largely self-financed independent Government corporation which soon after its creation, on its own initiative, and consistent with the provisions of the TVA Act, adopted a labor relations policy establishing a framework within which employees were extended a right to organize and bargain collectively through representatives of their own choosing. This policy predates a vast body of legislation in the field of labor relations and forms the foundation for TVA's collective bargaining agreements. The relationship between TVA and the labor organizations representing TVA employees has been characterized by a good-faith willingness to attempt to resolve mutual problems through negotiation and experimentation, and through the utilization of jointly developed procedures for the resolution of labor-management disputes. These dispute resolution procedures are embodied in TVA's comprehensive collective bargaining agreements, which are similar in scope to those in the private sector. Thus, the TVA labor-management relations program provides full representation in a well-established ongoing collective bargaining relationship.

After careful consideration of the unique labor-management relationship at TVA and its long-tested program, developed by the parties and established in agreements negotiated prior to E.O. 11491, and indeed, prior to the issuance of E.O. 10988, which agreements and the labor-management relations program provided for therein have continued in full force and in effect since the issuance of the Executive Orders; the benefits to the parties of maintaining the stability of their existing relationship; the joint desire for express exclusion of TVA and its collective bargaining agreements from E.O. 11491, as amended, by the TVA and the labor organizations representing its employees; and the recommendation of the Federal Labor Relations Council, the President concluded that the Tennessee Valley Authority should be expressly excluded from coverage by the Order.

(Continued)

Service Employees' International Union (AFL-CIO); TVA Public Safety Service Employees' Directly Affiliated Local Union No. 3033 (AFL-CIO); Office and Professional Employees International Union (AFL-CIO); TVA Association of Professional Chemists and Chemical Engineers; and TVA Engineers Association.

UNITED STATES

FEDERAL LABOR RELATIONS COUNCIL

1900 E. STREET, N.W. WASHINGTON, D.C. 20415

INFORMATION ANNOUNCEMENT September 24, 1975

To Heads of Agencies and Presidents of Labor Organizations:

REVISION OF COUNCIL RULES

Attached for your information is a copy of Part 2411--REVIEW FUNCTIONS OF THE COUNCIL and Part 2413--CRITERIA FOR DETERMINING COMPELLING NEED FOR AGENCY POLICIES AND REGULATIONS as revised and adopted by the Council.

On May 16, 1975, the Council published in the Federal Register (40 FR 21488) a proposed revision of Part 2411 and a proposed Part 2413 of its rules. The Council, after considering the views and suggestions of interested persons, has adopted the proposed revision of Part 2411 and the proposed Part 2413 with the additional changes contained in the attached regulations. These changes include:

-- Retention of the Council's present procedure in Part 2411 of its rules starting the running of time limits for the submission of documents from the date of service of a decision or document. The Council had proposed to start time limits running from the date of a decision or document instead of from the date of its service. Parties commenting were virtually unanimous in recommending retention of the present procedure. Note: The date of service as defined in the Council's rules remains unchanged; that is, the date of service is ". . . the day when the matter served is deposited in the U.S. mail or is delivered in person, as the case may be."

-- A revision of § 2411.17(a) to clarify that the Council will, upon an appeal by a party, review a decision of the Assistant Secretary wherein it was necessary for him to make a negotiability determination. An appeal by a party adversely affected must be filed in order to effect review. The Council will not, on its own motion, review the Assistant Secretary's determinations of negotiability. But, in contrast with other decisions of the Assistant Secretary where review is discretionary with

the Council, once an adversely affected party files an appeal of an Assistant Secretary decision wherein he made a negotiability determination, that party will have a right to have such a determination reviewed on appeal by the Council as provided in Executive Order 11838 and the Council's accompanying Report.

-- A revision of § 2411.24 to make it explicit that a request for an exception to an agency regulation under § 2411.22(b) can be made at the same time an agency head negotiability determination is sought. If the request is made at the same time, the additional time periods provided in this section for requesting and acting upon the exception would not apply.

-- A revision to clarify § 2411.43(c) regarding the acknowledgment of documents filed with the Council. A party filing documents with the Council may furnish an extra copy of its transmittal letter alone, or an extra copy of the document filed, to be date stamped and returned by the Council as an acknowledgment of receipt.

-- An increase from 3 to 5 days in the provision in § 2411.45(c) of the present rules for added time when service is by mail. The Council had proposed to delete altogether the provision for such added time. However, in response to the views of those who commented, it has decided not only to retain the provision for such added time, but to increase the time allowed from 3 to 5 days.

-- A revision of § 2411.45(e) to require that extension requests be filed in writing no later than 3 days before the expiration of time limits. The Council had proposed that extensions be requested 5 days in advance. Because many requests for extensions are the result of unforeseen events occurring shortly before a filing is due, the Council decided that a 5-day requirement might be unreasonable and perhaps result in unnecessary requests. A 3-day requirement is a reasonable requirement to impose on the parties and will provide sufficient time to consider and act on requests for extensions of time limits.

-- A revision of § 2413.2(e), one of five illustrative criteria for determining when a compelling need exists for an agency policy or regulation concerning personnel policies and practices and matters affecting working conditions, within the meaning of section 11(a) of the Order. This criterion has been revised to substitute the effectuation of the public interest for the concept of equitable treatment as a justification for uniformity. Thus, a compelling need will be found for a policy or regulation which establishes uniformity for all or a substantial segment of the employees of the agency or primary national subdivision where this is essential to the effectuation of the public interest.

As a result of the review of comments concerning the rule revisions and the Council's own case handling experience, the Council has identified several matters which require some explanation or clarification. The Council has concluded that these matters do not require changes in the rules, but instead, some further discussion in this announcement is sufficient to provide the needed explanation or clarification. These include:

-- The meaning of the phrase "adverse ruling" to which a party must be subject in order to file a petition for review of a decision wherein a negotiability determination is made by the Assistant Secretary (§ 2411.17(b)). The Council's rule in § 2411.17(b) describing who may appeal a decision by the Assistant Secretary wherein he made a negotiability determination uses language virtually identical to that in section 11(d) of the Order--"the party subject to an adverse ruling may appeal." Therefore, any party may appeal if it disagrees with aspects of the Assistant Secretary's decision wherein he made a negotiability determination. In a given case, more than one party may be "subject to an adverse ruling" and consequently, more than one appeal may be filed.

-- Specificity in agency head determinations that matters are not negotiable. Agency heads, in making a determination that a matter is not negotiable, sometimes fail to state with sufficient specificity the grounds for that determination. The labor organization is then required, in its appeal to the Council, to anticipate the full and detailed reasons which the agency may set forth in its statement of position. Such a practice unnecessarily complicates the preparation of an appeal by a labor organization and requires the Council to grant leave to file supplemental documents in order for the labor organization to respond to arguments made for the first time in the agency's statement of position. As a result, the consideration of the matter by the Council may be unduly prolonged.

   Further, the Council has previously urged the parties to negotiations to seek feasible, acceptable alternatives to proposals which are allegedly nonnegotiable before appealing the matter to the Council. It is elementary that understanding why a given proposal was considered nonnegotiable is a prerequisite to a successful search for a proposal which is negotiable. A detailed statement of the specific grounds and reasoning upon which the agency head relies would aid the parties in this search. The Council is concerned that the consequence of cutting short the search for acceptable, negotiable alternatives is the filing of premature or unnecessary appeals to the Council.

The Council, therefore, admonishes agency heads to provide full and specific grounds for determinations that a matter is not negotiable. Determinations should specify applicable sections, subsections and subparts of laws, regulations, or the Order upon which the agency head relies to support his decision and should explain in detail the relevance of previous Council decisions or other precedents where such precedents are relied upon.

-- Designation of officials for purposes of filing an appeal challenging an agency regulation on grounds of level of issuance or failure to meet compelling need criteria (§ 2411.23(b)). The Council's rule § 2411.23(b) provides that an appeal challenging an agency regulation on grounds of level of issuance or failure to meet compelling need criteria may be filed only by the national president of a labor organization (or his designee) or the president of a labor organization not affiliated with a national organization (or his designee). The manner of designating an official other than the president is strictly within the purview of the labor organization; the Council does not intend that the rule restrict the manner of designation to an action which can only be taken by a labor organization president. For example, the designation could be provided for in the labor organization's bylaws or constitution.

-- Benefits to parties from the rule change which enables agency and union headquarters to obtain service by entering appearances in lower proceedings (§ 2411.46(a)). The Council's rule § 2411.46(a) provides, in part, for service of a copy of any document filed with the Council under Part 2411 on all representatives of other parties who entered appearances in prior proceedings before the Assistant Secretary, agency head, or arbitrator involving the same matter. The purpose of this rule is to enable agency and union headquarters to obtain service of such documents merely by entering appearances in a proceeding involving parties at lower levels within the agency or union and without further participation in that proceeding. This provision should help alleviate the coordination problems between the headquarters and the local level experienced by some agencies and unions in filing appeals with and responding to appeals before the Council.

-- When the compelling need criteria are applicable (§ 2413.2). As indicated in section V.1.(a) and (b) of the Council's Report accompanying Executive Order 11838, any negotiation proposal is subject to the negotiability limitations of sections 11(a), 11(b) and 12(b) of the Order and these limitations are unchanged by the "compelling need" amendments to

the Order. Thus, if a proposal which conflicts with a regulation issued at the agency headquarters level or at the level of a primary national subdivision is found to be nonnegotiable under sections 11(b) or 12(b) of the Order, the question of compelling need for the regulation would not be reached. Conversely, if the proposal which conflicts with a regulation issued at the agency headquarters level or at the level of a primary national subdivision is found to be negotiable under sections 11(b) and 12(b), the question of the compelling need for the regulation would be reached and if no compelling need is found to exist, the regulation would not serve to bar negotiation on the proposal.

-- The kind of agency regulations to which the compelling need criteria apply (§ 2413.2). Section V.1.(a) and (b) of the Council's Report accompanying Executive Order 11838 indicates and § 2411.22(b) of the Council's rules confirms that the compelling need test for challenging an agency policy or regulation is confined to "internal" policies and regulations--that is, those policies and regulations issued by the agency and intended solely for application within that agency. Policies and regulations issued by an agency which are applicable to other agencies are not subject to a compelling need challenge. Any dispute which may arise as to whether a regulation is an internal regulation will be resolved by the Council on a case-by-case basis in appeals filed under section 11(c) of the Order.

-- The meaning of the phrase "basic merit principles" in compelling need illustrative criterion (c) (§ 2413.2(c)). Section 2413.2(c) provides as an illustrative criterion for determining compelling need: "The policy or regulation is necessary to insure the maintenance of basic merit principles." It is the intention of the Council that the phrase "basic merit principles" embrace any statutorily authorized personnel system within the executive branch which is, in fact, based on "basic merit principles" as determined by the Council on a case-by-case basis in appeals filed under section 11(c) of the Order.

-- The meaning of the phrase "substantial segment" in compelling need illustrative criterion (e) (§ 2413.2(e)). The criterion in § 2413.2(e) states: "The policy or regulation establishes uniformity for all or a substantial segment of the employees of the agency or primary national subdivision where this is essential to the effectuation of the public interest." Nothing in compelling need criterion (e) was intended to modify the principle enunciated by the Council in United Federation of College Teachers Local 1460 and U.S. Merchant Marine Academy, FLRC No. 71A-15 (November 20, 1972), Report No. 30: ". . . policies and regulations referred to in section 11(a) [of the Order] as an appropriate limitation on the scope of negotiations

> are ones issued to achieve a desirable degree of uniformity . . . in the administration of matters common to all employees of the agency, or, at least, to employees of more than one subordinate activity." The Council intends that the number of employees alone will not be determinative of whether a "substantial segment" of employees is covered by a regulation but will inquire into the breadth of the group within the agency or primary national subdivision and determine the issue on a case-by-case basis in appeals filed under section 11(c) of the Order.

The attached regulations were published in the Federal Register on September 24, 1975, and became effective on that date; except that, the rules in the attached regulations which derive from the recent amendments to sections 11(a) and 11(c) of the Order (that is, the amendments pertaining to internal agency policies and regulations which may bar negotiations) shall become effective December 23, 1975.

Harold D. Kessler

Harold D. Kessler
Acting Executive Director

Attachment

TITLE 5--ADMINISTRATIVE PERSONNEL

CHAPTER XIV, SUBCHAPTER B, FEDERAL LABOR RELATIONS COUNCIL

PART 2411--REVIEW FUNCTIONS OF THE COUNCIL

AND

PART 2413--CRITERIA FOR DETERMINING COMPELLING NEED FOR AGENCY POLICIES AND REGULATIONS

On May 16, 1975, there was published in the FEDERAL REGISTER (40 FR 21488) a notice of proposed adoption of amendments of Part 2411 and proposed adoption of a new Part 2413 of the Council's Rules.

Interested persons were invited to submit their views and suggestions in writing on or before June 6, 1975. All relevant matter which was submitted has been carefully considered, and the Council has decided to adopt the proposed rules, with changes, as set forth below.

Accordingly, the Council amends Title 5 of the Code of Federal Regulations, Chapter XIV, Subchapter B, Part 2411, and adds a new Part 2413 to read as follows:

CHAPTER XIV--FEDERAL LABOR RELATIONS COUNCIL
AND FEDERAL SERVICE IMPASSES PANEL

SUBCHAPTER B -- FEDERAL LABOR RELATIONS COUNCIL

PART 2411 -- REVIEW FUNCTIONS OF THE COUNCIL

Subpart A--General Provisions

Subpart B--Review of Decisions of the Assistant Secretary

Subpart C--Review of Negotiability Issues

Subpart D--Review of Arbitration Awards

Subpart E--General Requirements

Authority: 5 U.S.C. 3301, 7301; E.O. 11491, 3 CFR 1969 Comp., p. 191, 34 FR 17605; as amended by E.O. 11616, 3 CFR 1971 Comp., p. 202, 36 FR 17319; E.O. 11636, 3 CFR 1971 Comp., p. 232, 36 FR 24901; and by E.O. 11838, 40 FR 5743 and 7391.

Subpart A--General Provisions

§ 2411.1 Scope.

This part sets forth the procedures under which the Council, as provided in section 4(c) of the order, will review decisions of the Assistant Secretary issued pursuant to section 6 of the order, negotiability issues as provided in section 11(c) of the order, and arbitration awards under the order.

§ 2411.2 Coverage.

This part applies to employees, agencies, and labor organizations covered by the order and for purposes of § 2411.49 to other interested persons.

§ 2411.3 Definitions.

In this part -

(a) "Order" means Executive Order 11491 of October 29, 1969, entitled "Labor-Management Relations in the Federal Service," as amended by Executive Order 11616 of August 26, 1971, by Executive Order 11636 of December 17, 1971, and by Executive Order 11838 of February 6, 1975.

(b) "Executive Director" means the Executive Director of the Council.

(c) "Party" means any person, employee, labor organization, or agency that participated as a party--

(1) In a matter that was decided by the Assistant Secretary under section 6 of the order; or

(2) In a matter that was decided by an agency head under section 11(c) of the order; or

(3) In a matter where the award of an arbitrator was issued under the order.

(d) "Assistant Secretary" means the Assistant Secretary of Labor for Labor-Management Relations, except that in matters arising under section 6(a) of the order involving the Department of Labor, it means the Vice Chairman of the Civil Service Commission.

(e) "Primary national subdivision" of an agency means a first-level organizational segment which has functions

national in scope that are implemented in field activities.

(f) Terms defined in the order are used in this part with the meaning attached to them in the order.

§ 2411.4 Policy questions.

Notwithstanding the procedures set forth in this part, the Assistant Secretary or the Panel may refer for review and decision or general ruling by the Council any case involving a major policy issue that arises in a proceeding before either of them. Any such referral shall be in writing and a copy of such referral shall be served on all parties to the proceeding. Before decision or general ruling, the Council shall obtain the views of the parties and other interested persons, orally or in writing, as it deems necessary and appropriate.

Subpart B--Review of Decisions of the Assistant Secretary

§ 2411.11 Purpose.

This subpart, together with Subpart E, sets forth the procedures under which the Council will review decisions of the Assistant Secretary issued pursuant to section 6 of the order.

§ 2411.12 Considerations governing review.

A petition for review of a decision of the Assistant Secretary is not a matter of right, but of discretion, and,

subject to the requirements of this part, will be granted only where there are major policy issues present or where it appears that the decision was arbitrary and capricious.

§ 2411.13 Who may file a petition; time limit for filing; opposition; service.

(a) Any party aggrieved by a final decision of the Assistant Secretary may petition the Council for review.

(b) The time limit for filing is 30 days from the date the decision was served on the party seeking review.

(c) An opposition to Council acceptance of a petition for review may be filed by any party within 30 days from the date of service of the petition.

(d) A copy of the petition for review and of any opposition to acceptance shall be served by the filing party simultaneously on the other parties and on the Assistant Secretary.

§ 2411.14 Content of petition.

A petition must be a dated, self-contained document enabling the Council to rule on acceptance for review on the basis of its content without the necessity of recourse to the record. The petition must contain:

(a) A concise statement of the grounds on which review is requested;

(b) A summary of the evidence or rulings bearing on the issues, together with a summary of the arguments; and

(c) A copy of the decision of the Assistant Secretary which is being appealed including a copy of any decision, determination, report, or recommendation issued at an earlier stage in the proceeding and considered in his decision.

§ 2411.15 Council action on acceptance.

The Council shall review the petition and, if 50 percent or more of its members determine that the matter should be considered, the petition will be accepted. The Council shall promptly notify the parties whether the petition has been accepted or rejected.

§ 2411.16 Filing of briefs; Assistant Secretary as a party.

(a) Within 30 days from the date of service by the Council of notice to the parties that the petition is accepted for review, the parties may file briefs with the Council (with specific references to the pertinent documents and, where applicable, with citations of authorities) which shall be served on the other parties.

(b) Where the Council grants review, the Assistant Secretary may, at his discretion, intervene and become a party to the proceeding.

§ 2411.17 Determinations of negotiability.

(a) Notwithstanding the procedures of this subpart, the Council, as provided in this section, will, upon an appeal by a party, review a decision of the Assistant Secretary wherein it was necessary for him to make a negotiability determination in order to resolve the merits of an unfair labor practice complaint resulting from an alleged unilateral change in established personnel policies or practices or matters affecting working conditions.

(b) A petition for review of a decision wherein such a negotiability determination is made by the Assistant Secretary may be filed by the party subject to an adverse ruling under section 11(d) of the order.

(c) The time limit for filing is 30 days from the date of service of the Assistant Secretary's decision.

(d) A copy of the petition shall be served simultaneously on the other party and on the Assistant Secretary.

(e) A petition for review shall be dated and shall contain the following:

(1) A full and detailed statement of the aggrieved party's position including reasons for disagreeing with the Assistant Secretary's decision as to whether a matter is negotiable under the order, without regard to the limitations in § 2411.51.

(2) A copy of pertinent documentary material including a copy of the Assistant Secretary's decision and a copy of any decision, determination, report, or recommendation issued at an earlier stage in the proceeding and considered in his decision.

(f) Within 30 days from the date of service of a petition for review of a decision wherein a negotiability determination is made by the Assistant Secretary, the other party shall file a full statement of its position on any matters relevant to the petition which it wishes the Council to consider in reaching its decision.

(g) The Assistant Secretary may, at his discretion, intervene and become a party to the proceeding.

(h) The Council shall give petitions filed under this section priority consideration.

(i) Subject to the requirements of this section, the Council shall issue its decision sustaining, setting aside in whole or in part, or remanding that portion of the decision of the Assistant Secretary wherein it was necessary for him to make a negotiability determination.

§ 2411.18 Council decision; compliance actions.

(a) A decision of the Assistant Secretary shall be sustained unless it is arbitrary and capricious or inconsistent with the purposes of the order.

(b) The Council shall issue its decision on the case sustaining, enforcing, modifying, and enforcing as so modified, setting aside in whole or in part, or remanding the decision of the Assistant Secretary.

(c) The Council has the overall responsibility to assure compliance with the Executive order and decisions rendered thereunder. However, the Council shall first remand the action to the Assistant Secretary for purposes of compliance consistent with its decision, without limitation on the power of the Council. If the Assistant Secretary finds the necessary action for compliance has not been taken, the matter shall revert to the Council for appropriate action.

Subpart C--Review of Negotiability Issues

§ 2411.21 Purpose.

This subpart, together with Subpart E, sets forth the procedures under which the Council will review negotiability issues as provided in section 11(c) of the order.

§ 2411.22 Conditions governing review.

(a) The Council will consider a negotiability issue under the conditions prescribed by section 11(c)(4) of the order, namely: If, in connection with negotiations, the head of an agency (or his designee) has determined that a proposal is contrary to law, regulation, or the order and therefore

not negotiable, a labor organization may appeal to the Council for a decision when--

(1) It disagrees with the agency head's determination that the proposal would violate applicable law, regulation of appropriate authority outside the agency, or the order; or

(2) It believes that the agency's regulations, as interpreted by the agency head, violate applicable law, regulation of appropriate authority outside the agency, or the order, or are not otherwise applicable to bar negotiations under section 11(a) of the order because they do not meet the criteria established in Part 2413 or because they were not issued at the agency headquarters level or at the level of a primary national subdivision.

(b) The Council will review a labor organization's appeal challenging an agency head's determination that an internal agency regulation bars negotiation only if the labor organization has first requested an exception to the regulation from the agency head and that request has been denied or has not been acted upon within the time limits prescribed by § 2411.24.

§ 2411.23 Who may file a petition.

(a) A petition for review of a negotiability issue may be filed by a labor organization which is a party to the negotiations.

(b) An appeal challenging an agency regulation on grounds of failure to meet criteria established in Part 2413 or issuance below the agency headquarters or primary national subdivision level may be filed only by the national president of a labor organization (or his designee) or the president of a labor organization not affiliated with a national organization (or his designee).

§ 2411.24 Time limits for filing.

(a) The time limit for filing an appeal under § 2411.22 (a)(1) is 30 days from the date the agency head's determination was served upon the labor organization.

(b) The time limit for filing an appeal under § 2411.22 (a)(2) is 30 days from the date the agency head's determination was served upon the labor organization, provided, however, that if a request for an exception to an agency regulation under § 2411.22(b) was not served upon the agency head at least 15 days prior to the service of the agency head's determination on the labor organization, and was not acted upon in the agency head's determination, the time limit shall be extended a maximum of 15 days for requesting an exception to an agency regulation, and 15 days for the agency head to act upon such request for an exception.

(c) Review of a negotiability issue may be requested by a labor organization under this subpart without a prior

determination by the agency head, if the agency head has not made a decision --

(1) Within 45 days after a party to the negotiations initiates referral of the issue for determination, in writing, through prescribed agency channels; or

(2) Within 15 days after receipt by the agency head of a written request for such determination following referral through prescribed agency channels, or following direct submission if no agency channels are prescribed.

§ 2411.25 Content of petition; service.

A petition for review shall be dated and shall contain the following:

(a) A statement setting forth the matter proposed to be negotiated as submitted to the agency head for determination.

(b) A copy of all pertinent material including the agency head's determination on the proposal, the labor organization's request for an exception if required by § 2411.22(b), the agency head's denial of an exception, and other relevant documentary material.

(c) A full and detailed statement of the labor organization's position and reasons for:

(1) Disagreeing with the agency head's determination that the proposal would violate applicable law, regulation of appropriate authority outside the agency, or the order; or

(2) Believing that the agency's regulations, as interpreted by the agency head, violate applicable law, regulation of appropriate authority outside the agency, or the order, or are not otherwise applicable to bar negotiations under section 11(a) of the order. The statement shall cite the particular section of any law, regulation, or the order believed to be violated by the agency's regulations or shall explain the grounds for contending the agency regulations fail to meet the criteria established in Part 2413 or the required level of issuance of such regulations under section 11(a) of the order.

(d) A copy of the petition shall be served simultaneously on the other party.

§ 2411.26 Position of the agency; time limits for filing.

Within 30 days from the date of service of a copy of a petition for review of a negotiability issue the agency shall file a full statement of its position on any matters relevant to the petition which it wishes the Council to consider in reaching its decision.

§ 2411.27 Referral by the Federal Service Impasses Panel.

(a) Notwithstanding the procedures of this subpart, except § 2411.22, when the Panel finds that a negotiability issue is impeding the resolution of a negotiation impasse or that a negotiability issue which arose subsequent to the filing of a request to the Panel is the only issue at impasse,

the Panel may refer the negotiability issue to the Council for decision.

(b) A referral by the Panel shall contain:

(1) The matter proposed to be negotiated as submitted to the agency head for determination;

(2) The agency head's determination thereon, the labor organization's request for an exception if required by § 2411.22(b), and the agency head's denial of an exception;

(3) Statements of position from each party with supporting evidence and argument; and

(4) Any other appropriate documents of record.

(c) The Panel may refer a negotiability issue for decision by the Council at any time during its consideration of a negotiation impasse.

(d) The Council will give such referrals priority consideration.

§ 2411.28 Council decision.

Subject to the requirements of this part, the Council shall issue its decision sustaining or setting aside in whole or in part, or remanding the agency head's determination.

Subpart D--Review of Arbitration Awards

§ 2411.31 Purpose.

This subpart, together with Subpart E, sets forth the

procedures under which the Council will review arbitration awards under the order.

§ 2411.32 Considerations governing review.

The Council will grant a petition for review of an arbitration award only where it appears, based upon the facts and circumstances described in the petition, that the exceptions to the award present grounds that the award violates applicable law, appropriate regulation, or the order, or other grounds similar to those upon which challenges to arbitration awards are sustained by courts in private sector labor-management relations. The Council will not consider exceptions to an advisory arbitration award.

§ 2411.33 Who may file a petition; time limits for filing; opposition; service.

(a) Any party aggrieved by an arbitration award may petition the Council for review.

(b) The time limit for filing is 30 days from the date the award was served on the party seeking review.

(c) An opposition to Council acceptance of a petition for review may be filed by any party within 30 days from the date of service of the petition.

(d) A copy of the petition shall be served simultaneously on the other party.

§ 2411.34 Content of petition.

A petition must be a dated, self-contained document enabling the Council to rule on acceptance for review on the basis of its content without necessity of recourse to the record. The petition must contain:

(a) A concise statement of the grounds on which review is requested;

(b) A summary of the evidence or rulings bearing on the issues, together with a summary of the arguments; and

(c) A copy of the award of the arbitrator and other pertinent documents.

§ 2411.35 Council action on acceptance.

The Council shall review the petition and, if 50 percent or more of its members determine that the matter should be considered, the petition will be accepted. The Council shall promptly notify the parties whether the petition has been accepted or rejected.

§ 2411.36 Filing of briefs.

Within 30 days from the date of service by the Council of notice to the parties that the petition is accepted for review, the parties may file briefs with the Council (with specific reference to the pertinent documents and, where applicable, with citations of authorities) which shall be served on the other parties.

§ 2411.37 Council decision.

(a) An award of an arbitrator shall be modified, set aside in whole or in part, or remanded only on grounds that the award violates applicable law, appropriate regulation, or the order, or other grounds similar to those applied by the courts in private sector labor-management relations.

(b) The Council shall issue its decision sustaining, modifying, setting aside in whole or in part, or remanding the award.

Subpart E--General Requirements

§ 2411.41 Interlocutory appeals.

There shall be no interlocutory appeals. The Council will not consider a petition for review until a final decision or award has been rendered.

§ 2411.42 Approval of submission.

Except as provided in § 2411.23(b), the Council shall consider a petition from an agency or labor organization only when the head of the agency (or his designee), or the national president of the labor organization (or his designee), or the president of a labor organization not affiliated with a national organization (or his designee), as appropriate, has approved submission of the petition.

§ 2411.43 Place and method of filing; acknowledgment.

(a) A document submitted to the Council pursuant to this part shall be filed with the Executive Director, Federal Labor Relations Council, 1900 E Street, NW., Washington, D.C. 20415.

(b) Documents shall be filed with the Council by registered mail, by certified mail, or in person.

(c) A return postal receipt may serve as acknowledgment of receipt by the Council. The Council will otherwise acknowledge receipt of documents filed only when the filing party so requests and includes an extra copy of the document or its transmittal letter which the Council will date stamp upon receipt and return. If return is to be made by mail, the filing party shall include a self-addressed, stamped envelope for the purpose.

§ 2411.44 Number of copies.

Unless otherwise provided by the Executive Director, any document filed with the Council under this part, together with any enclosure filed therewith, shall be submitted in an original and three copies.

§ 2411.45 Time limits; computation; extension; waiver.

(a) When a time limit for filing is established under this part, the document must be received in the office of the Council before the close of business of the last day of the time limit.

(b) In computing any period of time prescribed or allowed by this part, the day of the act, event, or default from or after which the designated period of time begins to run shall not be included; but the last day of the period so computed shall be included, unless it is a Saturday, Sunday, or Federal legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, or Federal legal holiday. Also, when a period of time prescribed or allowed is 7 days or less, intermediate Saturdays, Sundays, and Federal legal holidays shall be excluded in the computation.

(c) Whenever a party has the right or is required to do some act pursuant to this part within a prescribed period after service of a notice or other paper upon him and the notice or paper is served on him by mail, 5 days shall be added to the prescribed period: Provided, however, that 5 days shall not be added if any extension of time may have been granted.

(d) Any request for the reconsideration of a decision of the Assistant Secretary, the award of an arbitrator, or the determination of an agency head shall not operate to extend the time limits established in this part.

(e) The Executive Director may extend any time limit provided in this part for good cause shown, and shall notify the parties of any such extension. Requests for extensions

of time shall be filed in writing no later than 3 days before the established time limit for filing, shall state the position of other parties on the request for extension, and shall be served simultaneously on the other parties.

(f) The Executive Director may waive any expired time limit in this part in extraordinary circumstances. Requests for waiver of time limits shall state the position of other parties on the request for waiver and shall be served simil-taneously on the other parties.

§ 2411.46 Service; statement of service.

(a) Any party filing a document as provided in this part is responsible for simultaneously serving a copy on the other parties including all representatives of other parties who entered appearances in the subject proceeding before the Assistant Secretary, the agency head, or the arbitrator, as the case may be, and on any interested person who has been granted permission by the Executive Director to present written and/or oral argument as an amicus curiae.

(b) In any matter involving review of a decision of the Assistant Secretary, the Assistant Secretary shall be served with a copy of all documents filed with the Council.

(c) Service shall be made by registered or certified mail or in person. A return post office receipt or other written receipt executed by the party or person served shall

be proof of service.

(d) A signed and dated statement of service shall be submitted at the time of filing. Statement of service shall include the names of the parties and persons served, their addresses, the date of service, the nature of the document served, and the manner in which service was made.

(e) The date of service or date served shall be the day when the matter served is deposited in the U.S. mail or is delivered in person, as the case may be.

§ 2411.47 Stay of decision or award; requests; criteria.

(a) A request for a stay shall be entertained only in conjunction with and as a part of a petition for review of a decision of the Assistant Secretary or an award of an arbitrator. The filing of a petition for review shall not itself operate as a stay of the decision or award involved in the proceedings.

(b) Consistent with section 2411.41, the Council will not consider a request for stay unless a final decision or award has been rendered.

(c) A request for a stay of a decision of the Assistant Secretary or of an award of an arbitrator shall contain a full statement of the grounds on which the stay is requested and shall be subject to the same time limits for filing as those established with respect to the filing of a petition for review of such decision or award.

(d) A timely request for a stay of a final decision or award shall operate as a temporary stay pending a decision by the Council on the request and such temporary stay shall be deemed effective from the date of the decision or award which is stayed.

(e) A request for stay of an Assistant Secretary's decision will be granted only where it appears, based upon the facts and circumstances presented:

(1) In a representation case, that --

(i) There is a strong likelihood of success on the merits of the appeal;

(ii) In the absence of a stay the applicant will suffer irreparable injury;

(iii) The issuance of a stay will not have a serious adverse effect on other parties to the case; and

(iv) The public interest will not be harmed by the grant of a stay.

(2) In an unfair labor practice case, that --

(i) There is a reasonable likelihood that the appeal will be accepted for review; and

(ii) A careful balancing of all the equities, including the public interest, warrants issuance of a stay.

(f) A request for stay of an arbitrator's award will be granted only where it appears, based upon the facts and circumstances presented that:

(1) There is a reasonable likelihood that the petition will be accepted for review; and

(2) A careful balancing of all the equities, including the public interest, warrants issuance of a stay.

(g) A request for a stay in other types of cases will be granted only where it appears, based upon the facts and circumstances presented, that:

(1) There is a reasonable likelihood the appeal will be accepted for review; and

(2) A careful balancing of all the equities, including the public interest, warrants issuance of a stay.

§ 2411.48 Oral argument.

The Council, in its discretion, may permit oral argument under such circumstances and conditions as it deems appropriate. Unless otherwise ordered, a hearing of oral argument shall be open to the public.

§ 2411.49 Amicus curiae.

Upon petition of an interested person, a copy of which petition shall be served on the parties, and as the Executive Director deems appropriate, the Executive Director may grant permission for the presentation of written and/or oral argument at any stage of the proceedings by an amicus curiae and the parties shall be notified of such action by the Council.

§ 2411.50 Transfer of record.

Upon request by the Council, the Assistant Secretary or the appropriate agency shall transfer the record in the case to the Council.

§ 2411.51 Matters not previously presented; judicial notice.

Consistent with the scope of review set forth in this part, the Council will not consider evidence offered by a party, or any issue, which was not presented in the proceedings before the Assistant Secretary, an agency head, or an arbitrator. The Council may, however, take judicial notice of such matters as would be proper.

§ 2411.52 Other documents.

(a) The Executive Director, in his discretion, may grant leave to file other documents as he deems appropriate.

(b) A copy of such other documents shall be served simultaneously on the other parties or persons.

§ 2411.53 Advisory opinions.

The Council shall not issue advisory opinions.

§ 2411.54 Distribution of Council decisions.

Copies of decisions by the Council shall be furnished to the parties and other interested persons and made available at the office of the Council.

PART 2413--CRITERIA FOR DETERMINING COMPELLING NEED FOR AGENCY POLICIES AND REGULATIONS

Sec.
2413.1 Purpose.
2413.2 Illustrative criteria.

Authority: 5 U.S.C. 3301, 7301; E.O. 11491, 3 CFR 1969 Comp., p. 191, 34 FR 17605; as amended by E.O. 11616, 3 CFR 1971 Comp., p. 202, 36 FR 17319; E.O. 11636, 3 CFR 1971 Comp., p. 232, 36 FR 24901; and by E.O. 11838, 40 FR 5743 and 7391.

§ 2413.1 Purpose.

Section 11(a) of Executive Order 11491 of October 29, 1969, as amended, requires, among other things, that an agency and a labor organization that has been accorded exclusive recognition, through appropriate representatives, shall meet at reasonable times and confer in good faith with respect to personnel policies and practices and matters affecting working conditions, so far as may be appropriate under applicable published agency policies and regulations for which a compelling need exists under criteria established by the Federal Labor Relations Council and which are issued at the agency headquarters level or at the level of a primary national subdivision. The purpose of this part is to establish illustrative criteria for determining when a compelling need exists for an agency policy or regulation concerning personnel policies and practices and matters affecting working conditions, within the meaning of section 11(a) of the order.

§ 2413.2 Illustrative criteria.

A compelling need exists for an applicable agency policy or regulation concerning personnel policies and practices and matters affecting working conditions when the policy or regulation meets one or more of the following illustrative criteria:

(a) The policy or regulation is essential, as distinguished from helpful or desirable, to the accomplishment of the mission of the agency or the primary national subdivision;

(b) The policy or regulation is essential, as distinguished from helpful or desirable, to the management of the agency or the primary national subdivision;

(c) The policy or regulation is necessary to insure the maintenance of basic merit principles;

(d) The policy or regulation implements a mandate to the agency or primary national subdivision under law or other outside authority, which implementation is essentially non-discretionary in nature; or

(e) The policy or regulation establishes uniformity for all or a substantial segment of the employees of the agency or primary national subdivision where this is essential to the effectuation of the public interest.

Effective date. Part 2411 and Part 2413 shall be effective September 24, 1975, except that the rules which derive from the

February 6, 1975, amendments to sections 11(a) and 11(c) of the order (that is, the amendments pertaining to internal agency policies and regulations which may bar negotiations) shall become effective December 23, 1975.

For the Council.

Robert E. Hampton
Chairman